

1 UNITED STATES OF AMERICA
2 UNITED STATES DISTRICT COURT
3 CENTRAL DISTRICT OF CALIFORNIA
4 EASTERN DIVISION

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6 HONORABLE VIRGINIA A. PHILLIPS
7 UNITED STATES DISTRICT JUDGE PRESIDING
8 - - -

9 UNITED STATES OF AMERICA,)
10)
11 PLAINTIFF,)
12)
13 VS.) CASE NO.:
14) ED CR 12-00092(B) -VAP
15 SOHIEL OMAR KABIR)
16 RALPH KENNETH DeLEON,)
17)
18 DEFENDANTS.)
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REPORTER'S TRANSCRIPT OF PROCEEDINGS
(P.M. SESSION)

FRIDAY, AUGUST 15, 2014

LOS ANGELES, CALIFORNIA

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2 - - -

3 THE COURT: Good afternoon. Let the record reflect
4 the presence of all members of the jury, all counsel and the
5 defendants present. You may continue.

6 MS. DeWITT: Thank you, Your Honor.

7 DIRECT EXAMINATION (CONTINUED)

8 BY MS. DeWITT:

9 Q. Good afternoon, Officer. I think where we left off just
10 before lunch was you were talking about there was close to
11 somehow 500 individuals or so at any given time that worked
12 at Port San Ysidro on any given day. If I could sort of
13 move you back in time, you left working there in
14 approximately August of 2012?

15 A. Yes, ma'am.

16 Q. About two years ago.

17 A. Yes, ma'am.

18 Q. And were you working at that location in January of
19 2012?

20 A. Yes, ma'am.

21 Q. And what was your position at that time?

22 A. I was working at the port enforcement unit at the port
23 of entry, and I conducted secondary inspections.

24 Q. Okay. And we talked a little bit before lunch about the
25 process that Customs and Border Protection uses when people

1 come into the country at JFK. Is the process somewhat
2 similar in San Ysidro?

3 A. Yes, ma'am.

4 Q. And by that I mean so would people actually come into
5 the border -- come across the border at San Ysidro, some of
6 them come in as pedestrians?

7 A. Yes, ma'am.

8 Q. So they go to a pedestrian entrance as opposed to flying
9 in an airplane and walk in. And is there also an entrance
10 for people that are in vehicles?

11 A. Yes, ma'am.

12 Q. And did you work with the vehicles or did you work with
13 the people walking in?

14 A. Pedestrian.

15 Q. Okay. And you mentioned that you were primarily
16 involved with secondary. Is it correct at that time, you
17 would primarily be involved at sometime after they went
18 through the primary inspection?

19 A. Yes, ma'am.

20 Q. Okay. So people would come in -- so if I understand it
21 correctly, people who would come in would initially go
22 through some kind of primary inspection, and then some of
23 them would get to go through and go to the United States, and
24 some of them would be referred for some secondary inspection?

25 A. Yes, ma'am.

1 Q. Okay. And for secondary inspection, if you found
2 contraband or if you found something that they're involved
3 in, something illegal, those people would be detained or
4 arrested?

5 A. Yes, ma'am.

6 Q. And there's a middle category where secondary involves
7 some further interviews.

8 A. Yes, ma'am.

9 Q. At that time, what was your -- you're sort of involved
10 in that secondary area, not the final area where you're
11 arresting people, not the initial review, but you're involved
12 in the secondary area. What were your responsibilities?
13 What would you do on a day-to-day basis?

14 A. Well, the area that I was in in the port enforcement, we
15 were with processing people that entered illegally or those
16 who had false documents and minor children.

17 Q. So your responsibility was essentially to process
18 people?

19 A. Yes, ma'am.

20 Q. Okay. And at the end of your process, you would make a
21 decision about whether somebody needed to go into further
22 proceedings?

23 A. Yes, ma'am.

24 Q. Or be turned away? Sent back out of the country.

25 A. Yes, ma'am.

1 Q. Or maybe eventually let into the country.

2 A. Yes, ma'am.

3 Q. So basically the three options are referred to somebody
4 else to be detained and arrested or some further proceeding?

5 A. Yes, ma'am.

6 Q. Is that a fair statement?

7 A. Yes, ma'am.

8 Q. Typically, when people were coming over the border from
9 Mexico into the United States, what would the typical things
10 people would get stopped for for a secondary inspection?

11 A. Um, documents, lack of documents, um . . . drugs. And
12 if the primary inspection wasn't satisfactory or if the
13 officer felt that the person needed to be inspected a little
14 bit further, they would be referred to secondary.

15 Q. Okay. And that could be for whatever reason they
16 wanted.

17 A. Yes, ma'am.

18 Q. Now, on January 13, 2012, were you working in
19 San Ysidro on the border?

20 A. Yes, ma'am.

21 Q. On that day, were you involved in any secondary
22 inspections?

23 A. Yes, ma'am, I was.

24 Q. And is there one in particular that you distinctly
25 remember from that day?

1 A. Yes, ma'am.

2 Q. Okay. And can you describe to the jury what it is you
3 remember about that day? First of all, how did the person
4 come to your attention?

5 A. The person was referred to secondary inspection based on
6 lookout, and that's when I got involved.

7 Q. Okay. And when you got involved, do you remember the
8 name of the individual that you did the secondary for?

9 A. Yes, ma'am. Santana Vidriales Miguel.

10 Q. And when that person was first referred to you, what did
11 you do?

12 A. Um, he was brought inside. Um, everyone that enters
13 that area since it was a secure area gets processed, gets
14 patted down for weapons. And we brought him in. He was
15 fingerprinted to make sure there were no wants or warrants,
16 and then I conducted an interview with him after a while.

17 Q. So the first thing you did was you interviewed him. Did
18 you ask him some questions about where he was coming from?

19 A. Yes, ma'am.

20 Q. And what else did you ask him?

21 A. I asked him if he was working, if, um -- what type of
22 work did he do, um, why was he -- where was he coming from
23 and how long was he in Mexico.

24 Q. Why did you care how long he might have been in Mexico?

25 A. To determine if he was admissible into the United

1 States.

2 Q. So did you at some point determine what his legal status
3 was?

4 A. Yes, ma'am.

5 Q. What did you determine his legal status to be?

6 A. He was a legal permanent resident.

7 Q. And he was coming back into the United States. And how
8 with respect to being a legal permanent resident does the
9 length of time you're out of country affect that?

10 A. If they're out of the country for more than 180 days,
11 it's considered abandonment of residency.

12 Q. And had he been out of the country for more than
13 180 days?

14 A. No.

15 Q. Approximately how long if you recall had he been out of
16 the country?

17 A. About two months.

18 Q. And you said that you asked him why he had been in
19 Mexico. What did he tell you?

20 A. He told me that he went to get dental work done.

21 Q. And when you asked whether he was employed, what did he
22 tell you?

23 A. He told me that at this time, he wasn't.

24 Q. Did you ask him anything else? Did you ask him if he
25 needed anything?

1 A. Yes, ma'am, I did.

2 Q. And what did he tell you?

3 A. I asked him if he wanted to eat, and he requested to use
4 his prayer rug, that he wanted to pray.

5 Q. Did you grant him that request?

6 A. Yes, ma'am.

7 Q. Can you explain what you did in order to comply with
8 that request?

9 A. In order for him to pray, he needed his prayer rug so I
10 had to go inside his luggage to get his prayer rug so he
11 could use it.

12 Q. Just to back up, when he came across the border and was
13 initially referred to you for a secondary inspection, he had
14 luggage with him?

15 A. Yes, ma'am.

16 Q. Was he also with somebody?

17 A. Yes, ma'am.

18 Q. Who was that?

19 A. He was with his grandmother.

20 Q. You mentioned that he requested an opportunity to pray.

21 A. Yes, ma'am.

22 Q. And you granted that request.

23 A. Yes, ma'am.

24 Q. And one of the things he requested in order to do that
25 was a prayer rug?

1 A. Yes, ma'am.

2 Q. And was that in his luggage?

3 A. Yes, ma'am.

4 Q. Okay. Did you go in his luggage to get his prayer rug?

5 A. Yes, ma'am, I did.

6 Q. What did you see when you got into his luggage?

7 A. Um he had paperwork in there and books besides clothing.

8 Q. Was there something about the books and paperwork that
9 was significant to you?

10 A. Yes, ma'am.

11 Q. And why is that?

12 A. Because he had things that referred to 9/11, and, uh, it
13 was based on basically trying to go and, uh . . . I forgot
14 what I was going to say, excuse me. It was based on having
15 to deal with people that were at war with Muslim countries.

16 Q. And just to back up a minute. Is the Customs and Border
17 Protection service legally authorized to inspect people's
18 luggage when they first come into the country?

19 A. Yes, ma'am.

20 Q. And are they also authorized when they deem it
21 appropriate to make photocopies of items that are in people's
22 possession?

23 A. Yes, ma'am.

24 Q. In this instance, did you make a determination that you
25 should -- did you, in fact, copy some items that were in his

1 possession?

2 A. Yes, I did.

3 Q. And is the reason you did this because of what you just
4 testified about, that they were somewhat alarming to you?

5 A. Yes, ma'am.

6 Q. And at this time I would ask you to look at the binder
7 that's placed in front of you, witness binder, and the Court
8 should have a copy of this as well. And if you could look at
9 what's been marked as -- you can skip 185 and go to 185 A.
10 Do you recognize the documents that are contained in
11 Government's Exhibit 185 A?

12 A. Yes, ma'am.

13 Q. And how do you recognize those documents?

14 A. That's one of the documents that was inside his
15 suitcase.

16 Q. These are documents that you copied that day --

17 A. Yes, ma'am.

18 Q. -- on January 13tg, 2012.

19 A. Yes, ma'am.

20 Q. There's in that exhibit approximately 25 pages. Did
21 you, in fact, copy more pages that day?

22 A. Yes, ma'am.

23 Q. So this is a subset of the items that you copied that
24 day when Mr. Santana went through customs?

25 A. Yes, ma'am.

1 Q. And if I could direct your attention to page 21 of that.
2 What is depicted on that page?

3 A. His California driver's license and his permanent
4 resident card.

5 Q. And by he, who do you mean?

6 A. Mr. Santana's.

7 Q. Miguel Alejandro Santana Vidriales.

8 A. Yes, ma'am.

9 Q. So this is a California driver's license and a copy of
10 his legal permanent residence card?

11 A. Yes, ma'am.

12 Q. If you could turn to the next page, page 22 of that
13 exhibit, what's shown there?

14 A. It's a copy of his Mexican passport.

15 Q. And again in the name of Santana -- Miguel Alejandro
16 Santana Vidriales?

17 A. Yes, ma'am.

18 MS. DeWITT: At this time, Your Honor, the
19 government would move to admit Government's Exhibit 185 A.

20 THE COURT: Any objections?

21 MS. VIRAMONTES: Your Honor, could we have a
22 moment?

23 THE COURT: As to 185 A-21, you'll redact the
24 address.

25 MS. DeWITT: I do have it in the copy, and I'm

1 going to publish it, Your Honor.

2 THE COURT: Thank you.

3 MS. VIRAMONTES: I'm sorry, could you repeat the
4 exhibit number?

5 MS. DeWITT: 185 A.

6 MS. VIRAMONTES: Thank you. Your Honor, no
7 objection.

8 MR. THOMAS: No objection, Your Honor.

9 THE COURT: Thank you. 185 A is ordered admitted.
10 You may publish.

11 (Exhibit 185 A admitted.)

12 BY MS. DeWITT:

13 Q. Officer, is this what you were referring to earlier as a
14 driver's license for the individual you did a secondary
15 inspection on on that day?

16 A. Yes, ma'am.

17 Q. Again, that's Miguel Alejandro Santana Vidriales?

18 A. Yes, ma'am.

19 Q. And is this the permanent residence card that he had in
20 his possession that day?

21 A. Yes, ma'am.

22 Q. In name of Santana Vidriales Miguel?

23 A. Yes, ma'am.

24 Q. I always get the order of the names mixed up of how they
25 are appropriately ordered. So on that day, in addition to

1 copying some of the items of paperwork that he had in his
2 luggage, you also copied his identification.

3 A. Yes, ma'am, I did.

4 Q. And showing you the next page, is that a photocopy of
5 the passport he was carrying that day?

6 A. Yes, ma'am.

7 Q. Again, in the name of Miguel Alejandro Santana
8 Vidriales.

9 A. Yes, ma'am.

10 Q. And you mentioned that there were some additional
11 documents that you copied, and I'd like to direct your
12 attention to the first page in Government's Exhibit 185 A.
13 Is this one of the documents that you copied that day?

14 A. Yes, ma'am, it is.

15 Q. And you mentioned that one of the things that was
16 significant to you about these documents was their content.
17 And just to direct your attention to the first page, if you
18 could read that for the record?

19 A. Targeting the populations of countries that are at war
20 with the Muslims.

21 Q. And what's the name under that?

22 A. Anwar al-Awlaki.

23 Q. So when you mentioned that one of the things that you
24 saw was documents about people at war with Muslims and
25 countries at war with Muslims, is this what you were

1 referring to?

2 A. Yes, ma'am.

3 Q. And is this the second page in this exhibit?

4 A. Yes, ma'am, it is.

5 Q. Which -- and what does this appear to be depict?

6 A. It depicts a person on the side, and it looks like a war
7 scene.

8 Q. Just to go through a couple of the examples you saw that
9 day, is this another item that's contained within
10 Government's Exhibit 185 A?

11 A. Yes, ma'am.

12 Q. Okay. And what does this appear to be depict?

13 A. That's looks like the Pentagon and the Twin Towers.

14 Q. And this document?

15 A. Yes, ma'am.

16 Q. What does this appear to depict?

17 A. That's the Twin Towers burning up.

18 Q. And this page?

19 A. I can't see that one too clearly. It looks like a
20 vehicle burning on the side. Yes, it's a vehicle burning.

21 Q. Does that appear to be a roadside bombing?

22 A. Yes, ma'am.

23 Q. And page 17 of this document.

24 A. The RPGs.

25 Q. It appears to represent individuals holding RPGs?

1 A. Yes, ma'am.

2 Q. And perhaps bazookas in the back?

3 A. Yes, ma'am.

4 Q. And showing you page 18 of this exhibit, what does that
5 appear to depict?

6 A. That's an airplane. An airplane.

7 Q. As a New Yorker, do you recognize that?

8 A. That's Time Square.

9 Q. Okay. Are you aware of a recent incident that happened,
10 a terrorist attack, in Times Square?

11 A. Yes ma'am.

12 Q. And was that an attack involving --

13 MR. THOMAS: Objection, relevance.

14 THE COURT: Sustained.

15 BY MS. DeWITT:

16 Q. And just one last image. This is one that I showed you
17 before, but I'd like to draw your attention in particular to
18 what's written in the lower corner. If you could for the
19 record just read what's written on this page?

20 A. The 9/11 operations are the greatest operations in the
21 history of mankind. 19 muhadeen succeeded in inflicting
22 human and financial losses against the enemy in a way that's
23 unprecedented. Ten years we look into some of the direct and
24 indirect consequences of this glorious event.

25 Q. And Officer, is it your understanding that these are

1 images from a magazine called Inspire?

2 A. Yes, ma'am.

3 Q. Now, in addition to the images that we've just seen from
4 Inspire magazine and the photographs and photocopies of
5 Mr. Santana's identification, were there some other items
6 that would tend to establish that these possessions were his?

7 A. Uh, yes, ma'am.

8 Q. And if I could direct your attention to page 23 of this
9 exhibit. Is this an item that you copied that day that was
10 in his possession?

11 A. Yes, ma'am.

12 Q. What is on this page?

13 A. It's phone numbers.

14 Q. And directing your attention to the one at the top, what
15 does that say?

16 A. Rafiq.

17 Q. And what is the number?

18 A. 626-589, and it looks like 2068.

19 Q. If I could direct your attention to the next page in
20 this exhibit which is page number 24 at the bottom, what does
21 this appear to be?

22 A. That's a copy of the bus ticket coming from Mexico.

23 Q. And when you interviewed him that day, is that where he
24 indicated he was coming from?

25 A. Yes, ma'am.

1 Q. Directing your attention to the next page, page 25, are
2 those some additional items that you copied that were in his
3 possession that day?

4 A. Yes, ma'am.

5 Q. Now, Officer, after you completed your interview of
6 Mr. Santana, as you indicated, you copied some items that
7 were in his luggage. What did you do with Mr. Santana?

8 A. Mr. Santana went -- he left. He entered the United
9 States.

10 Q. So you determined that he had a legal right to reenter.

11 A. Yes, ma'am.

12 Q. His legal permanent residence card was in order. You
13 had conducted the follow-up interview, copied documents.
14 Then you made a determination that he was to be released or
15 allowed to proceed into the United States.

16 A. Yes, ma'am.

17 MS. DeWITT: I have nothing further at this time,
18 Your Honor.

19 THE COURT: Thank you.

20 Ms. Viramontes, cross-examination.

21 MS. VIRAMONTES: I have an exhibit binder and
22 copies for the Court. May I approach?

23 THE COURT: You may.
24
25

CROSS-EXAMINATION

BY MS. VIRAMONTES:

Q. Good afternoon, Officer Rodriguez Lopez.

A. Good afternoon.

Q. Um, so you testified that you interviewed Mr. Santana;
correct?

A. Yes, ma'am.

Q. And you also interviewed his grandmother.

A. Yes, ma'am.

Q. Did you interview anyone else? Were they traveling with
anyone else?

A. No, ma'am, they weren't.

Q. When you stopped Mr. Santana, was there an alert
attached to him? I know sometimes there's TECS, T-E-C-S or
ATS, VTS alerts attached to individuals?

A. Yes, ma'am.

Q. Do you recall if there was an alert attached to him?

A. He was referred from primary to me.

Q. Okay. And at what point did you call the FBI?

MS. DeWITT: Objection. Relevance, beyond the
scope.

THE COURT: Sustained.

BY MS. VIRAMONTES:

Q. You were informed that you needed to interview
Mr. Santana; correct?

1 A. Yes, ma'am.

2 Q. And who informed you that you needed to interview
3 Mr. Santana?

4 A. As per the lookout. He said to interview him.

5 Q. Were you given specific instructions on what to talk to
6 him about?

7 A. Ask where he's coming from, who was he traveling with,
8 why was he gone.

9 Q. Do you remember receiving an email from Richard
10 Lottenberger about what to ask him?

11 MS. DeWITT: Objection, Your Honor. Beyond the
12 scope.

13 THE COURT: It's beyond the scope of the direct
14 examination.

15 MS. VIRAMONTES: Thank you, Your Honor.

16 Q. So you were given -- you just testified you were given
17 questions to ask him; correct?

18 A. Just the five Ws.

19 Q. And when you interviewed Mr. Santana, he told you that
20 he was 20 years old; correct?

21 A. Yes, ma'am.

22 MS. DeWITT: Objection, hearsay.

23 THE COURT: Overruled.

24 Go ahead.

25 THE WITNESS: Yes, ma'am.

1 BY MS. VIRAMONTES:

2 Q. And he was unemployed; correct?

3 A. Yes, ma'am.

4 Q. And you talked to his grandmother.

5 A. Yes, ma'am.

6 Q. And his grandmother told you that she had taken
7 Mr. Santana to Mexico for dental work; correct?

8 A. Yes, ma'am.

9 Q. And they couldn't afford to have the dental work done in
10 the United States.

11 A. Yes, ma'am.

12 Q. And she was traveling to the U.S. with him because she
13 didn't want him to travel by himself.

14 A. Yes, ma'am.

15 Q. When you interviewed Mr. Santana, he didn't tell you who
16 converted him to Islam, did he?

17 A. No, ma'am.

18 Q. He downloaded a copy of Inspire magazine; correct?

19 A. Yes, ma'am.

20 Q. But he didn't tell you that Mr. Kabir gave it to him,
21 did he?

22 A. No, ma'am.

23 Q. You looked through, um, the items that were in his
24 pocket; correct?

25 A. Yes, ma'am.

1 Q. Um, and you saw that he had some phone numbers.

2 A. Yes ma'am.

3 Q. He didn't have a phone number for Sohien Kabir, did he?

4 A. Not that I'm aware of, ma'am.

5 Q. In addition to the items that you just discussed with
6 the prosecutor, he had other books with him; correct?

7 A. Yes, ma'am.

8 Q. And one of the books that he had was called Los
9 Terroristas Secretos. Do you recalling seeing that book?
10 And I know I just totally butchered the name.

11 A. Los Terroristas Secretas?

12 Q. Yes.

13 A. Yes, ma'am.

14 Q. Do you recall seeing that book?

15 A. Yes, ma'am.

16 Q. Are you aware that this is a book written by Bill
17 Hughes?

18 A. I believe the copy, that it was -- the front page that
19 was photocopied, it tells who wrote the book.

20 Q. Are you aware that Bill Hughes is a Seventh Days
21 Adventist pastor?

22 A. No, ma'am.

23 Q. Are you aware that the secret terrorist are Jesuit
24 priests?

25 A. No.

1 MS. DeWITT: Objection, Your Honor. No foundation.

2 THE COURT: Sustained.

3 BY MS. VIRAMONTES:

4 Q. There was another book as well in his luggage; correct?

5 There was another book.

6 A. Yes, ma'am.

7 Q. And I'm gonna butcher this, too. The other one was
8 called Grande Mysteries -- you know what? Why don't I show
9 this to you as an exhibit. I think that would be much more
10 efficient.

11 THE COURT: Is that the copy for the witness?

12 MS. VIRAMONTES: I gave her a binder, and I think
13 she has it in front of her.

14 THE WITNESS: No ma'am, I don't.

15 MS. VIRAMONTES: Okay.

16 THE COURT: Oh, I might have both copies. These
17 are the witness's copies.

18 BY MS. VIRAMONTES:

19 Q. Could I ask you to turn to Defendant's Exhibit 5032. Do
20 you recognize this copy?

21 A. Yes, ma'am.

22 Q. And could you -- is it a true and accurate copy of the
23 book you saw that day?

24 A. Yes, ma'am.

25 Q. Would you mind reading the title out loud?

1 A. Los Terroristas Secretos.

2 Q. Thank you.

3 MS. VIRAMONTES: Your Honor, the defense moves to
4 move Exhibit 5032 into evidence.

5 THE COURT: Any objection?

6 MS. DeWITT: No objection, Your Honor.

7 THE COURT: Mr. Thomas?

8 MR. THOMAS: No objection, Your Honor.

9 THE COURT: All right. 5032 is ordered admitted.

10 (Exhibit 5032 admitted.)

11 THE COURT: You may publish. I think the
12 government has to turn off your display.

13 BY MS. VIRAMONTES:

14 Q. This is the book; correct?

15 A. Yes, ma'am.

16 Q. Thank you. And you found other books, too; correct?

17 A. Yes, ma'am.

18 Q. Could you I ask you to please to turn Exhibit 5028? Do
19 you recognize this book?

20 A. Yes, ma'am.

21 Q. Is this a true and accurate copy of what you saw that
22 day?

23 A. Yes, ma'am.

24 Q. Could you read the title out loud?

25 A. Historia Secretas de la Masoneria.

1 Q. And this was a book from the title for the movie that is
2 about the secrete history of the masons.

3 A. Yes, ma'am.

4 MS. VIRAMONTES: Your Honor, I would like to move
5 Exhibit 5028 into evidence and request permission to publish?

6 THE COURT: Any objection?

7 MS. DeWITT: No objection.

8 MR. THOMAS: No objection.

9 THE COURT: Ordered admitted, and you may publish.

10 (Exhibit 5028 admitted.)

11 BY MS. VIRAMONTES:

12 Q. And this is a copy of the book?

13 A. Yes, ma'am.

14 Q. And he had another book with him, too; correct?

15 A. Yes, ma'am.

16 Q. Okay. Could I direct your attention to Exhibit 5029?

17 Do you recognize this copy?

18 A. Yes, ma'am.

19 Q. Is it a true and accurate copy of what you saw that day?

20 A. Yes, ma'am.

21 Q. Would you read the title out loud.

22 A. Escuelas Secretas de la Masoneria.

23 Q. So another book about the secrecy of the masons.

24 A. Yes.

25 MS. VIRAMONTES: Your Honor, I move to move Defense

1 Exhibit 5029 into evidence and request to publish.

2 THE COURT: Any objection?

3 MS. DeWITT: No objection.

4 MR. THOMAS: No objection.

5 THE COURT: Thank you. 5029 ordered admitted, and
6 you may publish.

7 (Exhibit 5029 admitted.)

8 BY MS. VIRAMONTES:

9 Q. And I realize this is a bad copy, but this is a copy of
10 what you saw.

11 A. Yes, ma'am.

12 Q. Thank you. And there was another book, too, as well.
13 Could I turn your attention to Exhibit 5030? Do you
14 recognize this document?

15 A. Yes, ma'am.

16 Q. Is it a true and accurate copy of what you saw that day?

17 A. Yes, ma'am.

18 Q. Could you read the title out loud, please?

19 A. Grandes Misterios de los -- de los Tiempos.

20 Q. Um --

21 A. De toda los Tiempos.

22 Q. And this is another book about sort of the grand
23 mysteries or conspiracies; is that correct?

24 A. It's just, uh, grand mysteries.

25 Q. And when you --

1 A. Of all time. It says grand mysteries of all times.

2 Q. And in the subheading beneath it, it discusses Stone
3 Heng; correct?

4 A. Yes.

5 Q. And Bermuda Triangle; correct?

6 A. Correct.

7 MS. VIRAMONTES: Your Honor, the defense moves
8 Exhibit 5030 into evidence and requests permission to
9 publish.

10 THE COURT: Any objection?

11 MS. DeWITT: No, Your Honor.

12 MR. THOMAS: No, Your Honor.

13 THE COURT: Ordered admitted. You may publish.

14 (Exhibit 5030 admitted.)

15 BY MS. VIRAMONTES:

16 Q. So this is the book that you saw.

17 A. Yes, ma'am.

18 Q. Thank you. And there was yet another book; is that
19 correct?

20 A. I believe so.

21 Q. Could I turn your attention to Exhibit 5031? Do you
22 recognize this book?

23 A. Yes, ma'am.

24 Q. Is it a true and accurate copy of what you saw that day?

25 A. Yes, ma'am.

1 Q. I'd ask you to read the title out loud.

2 A. Martires Mexicanos Soldatos de Cristo Rey De Mexico
3 Glorioso.

4 Q. And based on the title, this seems to be a book about
5 Christian Mexican martyrs?

6 A. Yes, ma'am.

7 MS. VIRAMONTES: Thank you. Your Honor, the
8 defense would move Exhibit 5031 into evidence and request
9 permission to publish.

10 THE COURT: Any objection?

11 MS. DeWITT: No objection.

12 MR. THOMAS: No objection.

13 THE COURT: It's ordered admitted, and you may
14 publish.

15 (Exhibit 5031 admitted.)

16 MS. VIRAMONTES: Thank you, your Honor.

17 I have no further questions.

18 THE COURT: Okay, Mr. Thomas.

19 MR. THOMAS: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. THOMAS:

22 Q. Afternoon, Ms. Rodriguez-Lopez. How are you?

23 A. Oh, I'm fine, thank you.

24 Q. Good. During your direct testimony, you were asked
25 about what is involved in a secondary inspection; correct?

1 A. Yes, sir.

2 Q. And some of the reasons why you would do a secondary
3 inspection --

4 A. Yes, sir.

5 Q. -- right? And one of those reasons is because the first
6 person that did the primary inspection determined further
7 investigation was needed.

8 A. Yes, sir.

9 Q. Right? Did the person that did the primary inspection,
10 in this case, Mr. Santana, tell you why or what he felt
11 needed further investigation?

12 A. No, sir. All they put is lookout.

13 Q. What does lookout mean? You said that before. I don't
14 know what that means.

15 A. Means that a person entering the United States needs
16 some further inspection.

17 Q. Okay. So it wasn't your primary inspector that told you
18 he needed further inspection. It was some other agency that
19 put a lookout for Mr. Santana?

20 MS. DeWITT: Objection. No foundation.

21 THE COURT: Overruled.

22 You may answer.

23 THE WITNESS: That is correct, sir.

24 BY MR. THOMAS:

25 Q. So you didn't have a discussion with your primary

1 investigator. You were just told to be on the lookout for
2 the person.

3 A. No, sir.

4 Q. Okay. Could you explain the lookout again?

5 A. Okay. The person entering the United States, when they
6 enter and they present themselves for inspection, when the
7 primary officer's conducting their inspection, if the person
8 is determined -- if the person has a lookout or the person
9 needs further inspection, they refer the person in.

10 Q. Now I understand what a need for a further inspection
11 might entail, but what does the lookout mean?

12 A. It's exactly what I said, sir. The primary officer,
13 when the person -- when Mr. Santana, for example, entered the
14 United States, when they were conducting the primary
15 inspection on Mr. Santana, he was -- there was a lookout
16 saying that he needed a secondary inspection so primary
17 inspections refers the person to secondary.

18 Q. Well, what kind of things would trigger a lookout? Like
19 if someone's name pops up on a list?

20 A. Excuse me, sir?

21 MS. DeWITT: Objection. No foundation, beyond the
22 scope.

23 MR. THOMAS: She hasn't answered the question yet.

24 THE COURT: Well, usually I rule on the objection
25 before the witness answers. The objection is sustained.

1 BY MR. THOMAS:

2 Q. Ms. Rodriguez, there are certain things that
3 automatically make someone move to the detention or arrest
4 category, correct. Such as having contraband?

5 THE COURT: This is beyond the scope, Mr. Thomas.

6 This question, too, is beyond the scope.

7 MR. THOMAS: But Your Honor, this was actually said
8 during her direct exam from a question from Ms. DeWitt.

9 THE COURT: Well, don't argue it in front of the
10 jury.

11 MR. THOMAS: Certainly. Should I approach?

12 THE COURT: No. Move on to your next subject.

13 MR. THOMAS: Okay.

14 Q. In response to one of Ms. DeWitt's questions about what
15 you look for in secondary inspections, one thing you said is
16 lack of documents; correct?

17 A. Yes, sir.

18 Q. Another thing you said is drugs.

19 A. Yes, sir.

20 Q. Or if they had failed a primary inspection.

21 A. Failed a primary inspection?

22 Q. Or if the primary inspector told you they needed further
23 investigation; correct?

24 A. Yes, sir.

25 Q. Now, why is it that if someone possesses drugs, that's

1 automatically something you're to look for and ask further
2 about?

3 A. Uh, for drugs?

4 Q. Sure.

5 A. Because the agents come in to process the person for
6 drugs because they're going to be arrested.

7 Q. Why are they going to be arrested? What is it about
8 drugs that makes someone subject to arrest?

9 A. I mean, if they're bringing drugs into the United
10 States, it's harmful.

11 Q. Drugs are illegal to possess.

12 A. Yes, sir.

13 Q. Okay. And fake documents are illegal to possess.

14 A. Yes, sir.

15 Q. Inspire magazines are not illegal to possess.

16 A. No, sir.

17 Q. And that's why you let Mr. Santana into the country.

18 A. Mr. Santana was released into the United States because
19 he satisfied his admission requirements.

20 Q. Well, he wasn't arrested or further subject to detention
21 simply because he had an Inspire magazine.

22 A. Exactly, yes, sir.

23 Q. Or any other material that some people might consider
24 offensive.

25 A. Yes, sir.

1 Q. Okay. It was the fact that he had proper documentation,
2 and he did not possess contraband that allowed you to let him
3 come into the country.

4 A. Yes, sir.

5 MR. THOMAS: Thank you. No further questions.

6 THE COURT: Ms. DeWitt.

7 REDIRECT EXAMINATION

8 BY MS. DeWITT:

9 Q. Just one question. You referred in cross-examination to
10 what you call the five Ws.

11 A. Yes, ma'am.

12 Q. Can you explain what that means?

13 A. It's who, what, where, how and why.

14 Q. Is that a standard set of questions that you use in
15 following up doing a secondary?

16 A. Yes, ma'am.

17 MS. DeWITT: Nothing further, Your Honor.

18 THE COURT: Thank you. You may step down.

19 The government's next witness.

20 MR. CHIU: Your Honor, as I indicated to the Court
21 this morning --

22 THE COURT: Oh, you want to read the stipulation?

23 MR. THOMAS:

24 MR. CHIU: Yes. Before we get to the next witness,
25 defense requests that this witness be subject to recall.

1 THE COURT: She can remain until the end of the
2 day, and I'll take this up at the recess.

3 MR. THOMAS: Certainly.

4 MR. CHIU: Your Honor, and i just want to inquire
5 of the Court's practice. Is it to read the actual name of
6 the exhibit or just the exhibit number? I just want it to be
7 clear for the record.

8 THE COURT: So you're reading a stipulation about
9 admissibility?

10 MR. CHIU: The documents pursuant to 90211,
11 Your Honor.

12 THE COURT: It's whichever you prefer. If you want
13 to read the title of the document, that's fine.

14 MR. CHIU: For ease, if I can read just the exhibit
15 numbers that it would be faster.

16 THE COURT: That's fine. If that's sufficient for
17 your purposes, that's fine.

18 MR. CHIU: Thanks, Your Honor.

19 The following exhibits are accompanied by
20 certifications which satisfy the requirements of Rules 90211
21 and 8036, and therefore, it's not required to subpoena the
22 record custodians to testify at trial about these records.

23 The following records should be admitted,
24 Your Honor, to -- according to the following exhibit numbers,
25 and I'll state the organization and the exhibit numbers.

1 The first organization is LAX Firing Range related
2 Exhibit Numbers 106, 127, 125.

3 Second organization is AT&T related to number
4 626-589-2068 related to Exhibit Number 475.

5 Third one is Tumblr related to Exhibit Number 482.

6 Fourth organization is Facebook following Exhibits
7 Numbers 195, 196 and 198.

8 Next exhibit would be the T-Mobile phone records
9 for 909-647-5061, Exhibit Number 478.

10 Next Exhibit is 24 Hour Fitness related to Exhibit
11 No. 44.

12 Next organization is Skype related to records for
13 (only_n_cali and juan.ton21), and that's related to Exhibit
14 No. 702.

15 The organization next is Cheapoair related to
16 Exhibit Number 192.

17 Next organization is Google related to the emails
18 101mesr@gmail.com, blackflagbanner@gmail.com,
19 blackflagbanner1400@gmail.com) related to Exhibit 479.

20 Next organization is Facebook related to the user
21 name arifeeng, a-r-i-f-e-e-n-g, and that's Exhibit Number
22 197.

23 Next organization is SC Village Paintball, Exhibit
24 Numbers 150, 153, 154, 155.

25 Next organization is Los Angeles Gun Club. It's

1 Exhibit Numbers 130, 131, 132, 144 and 146.

2 Next organization is Western Union related to the
3 following transaction records: 230113, 230114 and 218909
4 related to Exhibits 466, 467, 468.

5 Next organization is Yahoo! related to the email
6 address simsjessica41@yahoo.com, and that's
7 s-i-m-s-j-e-s-s-i-c-a-41@yahoo.com, Exhibit Number 472.

8 Next one is also Yahoo! with the following email
9 addresses: who_m_i66@yahoo.com and app1821@yahoo.com related
10 to Exhibit Number 471.

11 Next organization is Sprint related to the phone
12 numbers 318-820-4287, 909-753-7300, Exhibit Number 481.

13 Next organization again is Google for the email
14 address sk.tefl.g@gmail.com, Exhibit Number 473.

15 Next one is Green Dot Bank, Exhibit 474.

16 Next organization is Time Warner related to the IP
17 address 76.167.167.83 related to Exhibit 480.

18 Next organization is Google related to the email
19 address feen13@gmail.com related to Exhibit 477.

20 I have two more, Your Honor.

21 Next organization is Wells Fargo Bank related to
22 records for Ralph K. DeLeon, Exhibit Numbers 191 and.

23 Finally, FBI Los Angeles Passport Office TD related
24 to Exhibit Numbers 175 and 176.

25 Your Honor, to the extent those exhibits have not

1 already admitted into evidence, the government formally moves
2 those into evidence at this time.

3 THE COURT: All right. I take it this is by
4 stipulation?

5 MR. THOMAS: That's correct, Your Honor.

6 MR. AARON: That's correct.

7 THE COURT: All ordered admitted.

8 MR. CHIU: Thank you, Your Honor.

9 The next witness is the United States calls
10 Investigator Craig Goldsmith.

11 THE COURT: Thank you.

12 THE CLERK: Please raise your right hand.

13 (Witness sworn.)

14 THE CLERK: Thank you. You may be seated.

15 Please state your full name and spell it for the
16 record.

17 THE WITNESS: My name is Craig Goldsmith spelled
18 G-o-l-d-s-m-i-t-h. First of Craig, C-r-a-i-g.

19 THE COURT: Thank you. You may inquire.

20 DIRECT EXAMINATION

21 BY MR. CHIU:

22 Q. What do you do for a living?

23 A. I'm an investigator with the Orange County Sheriff's
24 Department.

25 Q. And how long have you been an investigator with the

1 Orange County Sheriff's Department?

2 A. I've been employed by the Orange County Sheriff's
3 Departments for 24 years. I've been an investigator for
4 14 years.

5 Q. Can you describe some of your responsibilities as an
6 investigator?

7 A. As an investigator, my responsibility is to investigate
8 complex crimes that are ongoing and follow up to what's done
9 on patrol. Specifically, for the last seven years, I have
10 been assigned to our computer forensics unit.

11 Q. And can you describe a little bit about what the
12 computer forensic unit does?

13 A. Computer forensics unit is a support unit for other
14 investigative units within my department. We analyze digital
15 media which is to say computers, cell phones, loose media
16 such as thumb drives, CDs, DVDs, memory cards, et cetera.
17 The --

18 Q. Okay. Why don't we do this. Can you slow down a tad
19 bit? The court reporter has to write everything down so it
20 gives her an opportunity for a break and me an opportunity
21 for a break as well.

22 A. All right.

23 Q. So can you briefly describe again what the laboratory
24 does?

25 A. Yes. As our computer forensics unit, we are tasked with

1 providing support for other investigative units within our
2 department. Specifically, we perform digital analysis or
3 computer analysis on digital media that's brought into our
4 lab. Examples to that would be computers, cell phones,
5 memory cards, CDs, DVDs, et cetera.

6 Q. And is there a formal name for the laboratory that you
7 work for?

8 A. Yes.

9 Q. And what is that formal name?

10 A. I'm currently assigned to the OC RCFL. That's OC RCFL,
11 and that stands for Orange County Regional Computer Forensics
12 Laboratory.

13 Q. And your formal title at OC RCFL is what?

14 A. I'm a task force officer.

15 Q. And you often referred to as well as a forensic
16 examiner?

17 A. Yes.

18 Q. Can you generally describe your training and experience
19 as a forensic examiner?

20 A. Yes. For the last seven years, I have been specifically
21 assigned to be a forensic examiner first for the Sheriff's
22 Department and then as a task force officer for the OC RCFL.
23 That's involving training that I have attended, formalized
24 training, over 1100 hours worth of training in how to perform
25 computer forensics, specific types of file systems and

1 operating systems, how to collect and analyze digital media.

2 Q. And approximately how many computers or digital media
3 have you examined in your career as a forensic examiner?

4 A. It's been -- an approximate number would be over 500.

5 Q. Let's explore that a little bit. Can you explain what
6 digital media is? Can you give some examples of the
7 different types of digital media? I think you mentioned some
8 before, but if you could just make that clear.

9 A. Yes. Digital media is just a fancy way of saying
10 information that is stored on digital material. It's either
11 stored magnetically or by a laser or mechanical means and is
12 retrieved in that same manner by a computer reading
13 information from a hard drive, reading information from flash
14 media in order that it can pull up the word document or the
15 picture file or the audio file that's been saved to that
16 particular piece of media such as a thumb drive or an MP-3
17 player, something along those lines.

18 Q. And in your experience with digital media, is it
19 possible these days for a small piece of digital media to
20 contain a lot of information?

21 A. Absolutely.

22 Q. For example, if we were talking about a SIM card, that
23 is two gigabytes. Could that contain a lot of information?

24 A. Yes.

25 Q. And maybe you can explain what a gigabyte is.

1 A. Okay. We'd have to actually take a step back to go over
2 it. And speaking computer-ese, a byte is a single
3 character. A byte is a unit of measure when defining
4 computer jargon. And one byte, b-y-t-e, is what is needed to
5 define a single character such as a letter or a number or an
6 alpha numeric character.

7 There are approximately 1000 characters that can
8 fit on a page. That would be one kilobyte. A kilobyte is
9 1000 bites. A megabyte is 1000 kilobytes. So you would
10 have -- if you had a one-megabyte size book, that would be a
11 thousand page book. A gigabyte is 1000 megabytes. If you
12 had a gigabyte worth of information, you potentially could
13 have one thousand 1,000-page books worth of characters.

14 Q. So my math is terrible so I'm gonna ask you a simpler
15 question. Today's iPods have how many gigabytes?

16 A. It depends on the make and model.

17 Q. Okay. The most basic model of an iPod is how many
18 gigabytes? Do you know?

19 A. Absolutely. Today, right now, I don't know. I would
20 guess it would be between 8 and 16 gigabytes in size.

21 Q. How many songs can fit in an iPod that is eight
22 gigabytes now?

23 A. Thousands.

24 Q. And if we were to expand that to computers, how many
25 songs or lectures or images can fit on a computer?

1 A. Quite a few. Probably in the hundreds of thousands
2 because just by their very nature, computers with their
3 installed operating system and a system file is going to be
4 well over a hundred thousand files just to get the computer
5 up and running.

6 Q. And is the nature of digital media today where you can
7 transport it from one place to another without much
8 detection?

9 A. Yes.

10 Q. Are you able to put a SIM card in your pocket and walk
11 through say a metal detector?

12 A. That would be my guess, yes.

13 Q. Now, are you able to transport digital media to various
14 places without drawing a lot of attention?

15 A. Yes.

16 Q. You were able to fit small pieces of digital media that
17 contain a lot of information to virtually anywhere without
18 people knowing?

19 MR. AARON: I'll object, Your Honor. It's leading.

20 THE COURT: Overruled.

21 You may answer.

22 THE WITNESS: Yes, you could.

23 BY MR. CHIU:

24 Q. Now let's talk a little bit about your work with the
25 forensic laboratory. Can you walk us through how you examine

1 a piece of digital media that comes through the laboratory?

2 A. Yes. The first introduction that we have to someone
3 wanting to use our service is they must submit a service
4 request. That's basically just a form that we have, and we
5 ask that the submitting person we refer to a case agent fill
6 out the form basically identifying who they are, what agency
7 they work for, what is it they are requesting us to do.

8 Do they want us to assist them going out on a
9 search? Do they want us to look at digital media that they
10 have in their possession? What is the nature of the request.

11 We also ask that they provide us in addition to the
12 digital media they want us to look at legal authority, a
13 search warrant, a consent form, something that gives us legal
14 authorization to look at whatever it is they want us to look
15 at.

16 Q. So in that first step of the process when a special
17 agent or law enforcement officer wants a piece of digital
18 media reviewed, how -- when do you first see that
19 application?

20 A. To clarify, as a forensic examiner?

21 Q. As a forensic examiner, yes.

22 A. The first step that happens is they must submit the
23 paperwork. The case agent books in the digital media they
24 want examined to our evidence technician. The evidence
25 technician takes that digital media and stores it in our own

1 in-house evidence control center at the laboratory.

2 The service request itself is reviewed by the lab's
3 administration to make sure that we as a lab can fulfill the
4 service request. It is then assigned to one of our three
5 teams of forensic examiners to have someone actually perform
6 the work. Each team is headed up by a team leader. That
7 team leader takes a look at the service request and then
8 assigns it to a particular examiner to actually fulfill the
9 service request.

10 Q. So when a law enforcement officer brings you a piece of
11 digital media, is it kept in a place that is controlled?

12 A. Yes.

13 Q. And why is it kept in a place that's controlled?

14 A. For purposes of chain of custody, to show who had it at
15 a particular time.

16 Q. And who had particular access to the digital media; is
17 that correct?

18 A. Correct.

19 MR. AARON: Leading.

20 THE COURT: Sustained.

21 Refrain from leading questions.

22 BY MR. CHIU:

23 Q. What's the next step that occurs?

24 A. After it's been assigned to a specific examiner, the
25 examiner needs to review the service request. He needs to

1 review the legal authority and also get the evidence from the
2 evidence control center that's at the laboratory.

3 Q. Can you explain a little bit more about what you mean by
4 saying review the legal authority?

5 A. Basically to look at the search warrant, look at the
6 consent form, make sure it actually covers the information or
7 the data that we're supposed to be examining. If it doesn't
8 mention anything about examining digital media, we are not
9 going to be conducting an examination on that particular
10 piece of submitted media until we get that legal authority.

11 Q. So once you've determined that you do have the legal
12 authority, what do you do next?

13 A. Next step would be basically to get the evidence from
14 the evidence control center, and the individual examiner
15 would then take control of it. And each examiner at the lab
16 has their own evidence locker in their work area, we refer
17 them to as pods, and that evidence is maintained in there for
18 the duration of the examination.

19 Q. And what's the purpose of keeping the digital media in
20 that pod?

21 A. Basically so only the examiner has control of that piece
22 of media.

23 Q. What happens next?

24 A. Next the examiner actually looks at the piece of media.
25 And if we're talking about a computer, we want to remove

1 whatever media is within the computer, usually a hard drive.
2 And then we turn on the computer with the hard drive removed
3 because we want to make sure that the computer actually
4 starts --

5 Q. Okay, stop there. Let's take that step by step. So
6 what's the first thing you do -- well, let's take an example
7 of a computer. When you get a computer, how do you begin to
8 review that computer to conduct a forensic examination?
9 What's the first step that you take?

10 A. The first step is to actually look at the computer, make
11 sure that's in a sealed condition. It should be in a sealed
12 bag or sealed container of some sort. Remove it from the bag
13 or the container. Physically inspect it. In the case of a
14 computer, we would want to remove the hard drive. That's the
15 storage compartment. Um --

16 Q. Okay. Why do you do that?

17 A. Because at some point, we want to attempt to turn on the
18 computer. If we have the hard drive removed, no changes will
19 be made to the data that's on that hard drive.

20 Q. Does the -- uh, does the act of just turning on a
21 computer, uh -- does the just the act of turning on the
22 computer alter the hard drive in some way?

23 A. Potentially, yes.

24 Q. And is that the purpose for removing the hard drive
25 before inspecting it?

1 A. One of several reasons, yes.

2 Q. So after you remove the hard drive from the computer,
3 what do you do next?

4 A. The next step is to connect the computer to a power
5 source, connect it to a monitor and turn it on and look at
6 its settings. We refer to that as the BIOS settings,
7 B-I-O-S, Basic Input Output System.

8 Q. And just to be clear, at this point, is the hard drive
9 out?

10 A. Yes. The hard drive has been removed at this point.

11 Q. You can boot up the computer without the hard drive.

12 A. That is not the way it's always done, but primarily,
13 yes.

14 Q. After booting up the computer itself, what do you do?

15 A. We check the time and date settings, look for any system
16 information such as how much memory is on the computer, look
17 for any passwords that might be installed on the computer
18 system. We're looking for anything that potentially could
19 affect our ability to look at the data on the hard drive that
20 we removed.

21 Q. Now, if the service request is to create a forensic
22 image of the digital media, what do you do?

23 A. Going back to the example of a computer, we connect that
24 hard drive to what we refer to as a write blocker. That's
25 w-r-i-t-e blocker. And that's either a physical or a

1 software device that's designed to allow our forensic
2 software to look at the data on the hard drive without
3 causing any changes to the data.

4 Q. And when you say not cause any changes on to the hard
5 drive, what exactly do you mean? Can you give an example?

6 A. If I were to have a computer that has a Windows
7 operating on it, and I was just to turn on the computer and
8 do a regular start-up of that computer, the mere act of
9 turning it on will cause changes to the data on that hard
10 drive. Systems files are being updated. Database files
11 referred to as a registry are being updated. You're causing
12 changes to system related files on that. That potentially
13 could overwrite or obliterate data that's been deleted from
14 that computer that is potentially recoverable.

15 Q. And what's the purpose of having it write block only?

16 A. Our goal is to look at the information on that piece of
17 media and make a copy of it without doing any of those
18 changes I've just described.

19 Q. So after the hard drive is plugged into the write block
20 system, hardware system, what happens next?

21 A. The next step is to actually make a copy of all of the
22 data, all of the user accessible data from the hard drive to
23 basically a hard drive belonging to the lab. So we're making
24 a bit for bit cop of user accessible data from what we call
25 the target hard drive or the source hard drive, that's the

1 hard drive that was in the computer, and that's going to what
2 we refer to as the staging media, basically a temporary
3 holding location.

4 Q. And before you do that, do you insure that the staging
5 media is, uh, wiped or clean?

6 A. Yes. We -- um under optimal conditions, what we wish to
7 do is have that data transferred to essentially a clean
8 slate. So the hard drives that we use to receive the data,
9 they have been previously wiped or the data that was on that
10 hard drive before has been overwritten. So it's as if you're
11 at blackboard and you use an eraser and completely wiped it
12 clean before we put new information on that blackboard.

13 Q. Will you describe the process of making a duplicate
14 copy?

15 A. I refer to it as an exact bit for bit copy also known as
16 a forensic image.

17 Q. How do you insure that the staging media is an exact
18 copy of the digital media that you've taken the data off of?

19 A. There is a process called hashing. During the
20 acquisition of the data from the target hard drive, the data
21 on that hard drive is being calculated using a mathematical
22 algorithm, that's just a fancy way of saying a calculation,
23 and that generates a number which is referred to as a hash,
24 and that's essentially a digital fingerprint for that piece
25 of media. Once we make the copy, a calculation is made on

1 the data from that copy. And ideally, the hash from the copy
2 should match the original, and if it doesn't, then you've had
3 hiccup somewhere, and you need to find out what went wrong.

4 Q. So you run that hash -- or, excuse me, that calculation
5 on the original media, correct, and you get a number or an
6 identification?

7 A. Correct.

8 Q. And you do the same for the staging media?

9 A. Correct, after it's been generated well before the image
10 file that is now on the staging media, yes.

11 Q. And by matching up those two, are you able to determine
12 then that you've made a duplicate copy?

13 A. Yes.

14 Q. Or, excuse me, what you say, a bit for bit copy?

15 A. Yes. We made a forensic image of the data from the
16 source piece of media.

17 Q. So what happens after you've now determined that you've
18 made a bit for bit copy on your staging media?

19 A. After we have successfully made a copy of it, now it's
20 time to actually process, uh, the data that's on the
21 duplicate copy, and we use forensic software to basically
22 analyze and compartmentalize the information. PDF files are
23 sorted with other PDFs files. Picture files are sorted with
24 picture files. Word documents, Excel spreadsheets, which
25 have you, they're all sorted and categorized together.

1 The forensic software also does a process which is
2 known as indexing. It's basically making a directory of all
3 the word strings that are on that media, all the various word
4 lists that are on there and compiles essentially a table of
5 contents or an index for that information.

6 So, for example, once it's been processed, if a
7 case agent was interested in looking for the word Goldsmith
8 which just happens to be my last name, they could type in
9 Goldsmith, and fairly instantaneously, the results of how
10 many instances of the word Goldsmith appears on that piece of
11 media would be available for the case agent to review and
12 make a determination if those instances of that key word
13 Goldsmith, if that's relevant to their case.

14 Q. What is the purpose of having this index and search
15 function?

16 A. If there are particular phrases or a combination of
17 words that are significant to a case agent or to the person
18 conducting the examination, this allows them to quickly look
19 through all of the data which there are billions and billions
20 of pieces of data on any given piece of hard drive or any
21 piece of media and allows them to quickly narrow down and
22 locate the requested information.

23 Q. Approximately in a normal computer, just a standard if
24 you went to the store and bought a computer, how many
25 files -- how many directories or files would a computer have?

1 A. It would minimally be for a new computer in the hundreds
2 of thousands range.

3 Q. And would it be possible to hide or to put a document in
4 any of those files? Any of those files or directories, I'm
5 sorry.

6 A. Some of the files or directories might actually be
7 protected by the system that would prevent a user from
8 accessing them, at least not without some additional
9 administrative privileges on that computer. But for the most
10 part, it's wide open and fair game for someone to place a
11 file in any given location.

12 Q. Would it be possible as the person who bought a computer
13 to write homework on and create a new file called homework?
14 Would it be possible?

15 A. Yes, depending on what software they have installed on
16 it.

17 Q. And would it be possible to put any type of file in a
18 folder or directory called Homework?

19 A. Absolutely.

20 Q. And is that the purpose of having a search function that
21 you placed onto the media that you've discussed?

22 A. Yeah. The purpose of the index is to allow for a rapid
23 search of the data on there, wherever it might be. Because
24 of the indexing function, whether a file is hidden or not,
25 whether a file is in a particular directory or not, its core

1 information that makes up that file has been analyzed, and
2 it's available to be searched.

3 The one exception that I can think of off the top
4 of my head is if a file is encrypted by some kind of
5 encryption algorithm that would basically make the data
6 within that file to be -- to appear to be nonsensical, not
7 make any sense so therefore, there'd be nothing for the
8 software to index. It would just appear to be gobbledegook
9 until that particular file or group of files were decrypted
10 by whatever means.

11 Q. Now, what happens after you install that search -- let
12 me back up. Installing that search function and table of
13 contents, does that alter the digital media on the
14 destination device or the bit by bit copy that you've
15 created?

16 A. No, it does not.

17 Q. And how do you know that?

18 A. There are number of reasons. The way that we make our
19 copies, essentially, they have some built-in integrity
20 functions within the image file that we've created that if
21 the data somehow is altered, it's essentially brought to the
22 examiner's attention, and we essentially know that we have a
23 corrupted image file. That would be the very first initial
24 step.

25 The fail safe method that we employ after an

1 examination is complete, after either I or the case agent has
2 conducted all the searches and located all the files he or
3 she is interested in, we run another hash against the image
4 file, and that hash if nothing has changed should be the same
5 as when it was originally generated.

6 Q. And a hash would be, again, like a digital fingerprint?

7 A. Yes, except far more precise.

8 Q. When you say far more precise, how precise?

9 A. The odds of two files or two pieces of media having the
10 same MD5 hash -- and there are different sorts of hashes, but
11 the one we commonly use is called an MD 5 hash. That stands
12 for Method Digest 5. The possibility of two files having the
13 exact same MD5 hash with different data within them randomly
14 occurring is 340 billion billion billion billion to 1 against
15 such an occurrence.

16 Q. I really can't even do that.

17 THE COURT: In your -- in your head?

18 MR. CHIU: I learned on a calculator, Your Honor.

19 THE WITNESS: Let's -- your odds are better in
20 Vegas.

21 MR. CHIU: I'll move on, Your Honor.

22 Q. What happens after, uh -- what happens after you've
23 loaded this software into the destination media?

24 A. After we've processed the information and it's
25 essentially ready to analyzed, in this particular case, the

1 examiner is going to be conducting the examination. We refer
2 to that as a directed examination. An examiner would
3 actually start looking at the media based on what was in the
4 service request.

5 The other way that we go about doing it is referred
6 to as a CAIR, C-A-I-R. That stands for Case Agent
7 Investigative Review. And all that data that's now been
8 processed and separated and identified, that is now going to
9 be made available for the case agent to review using the
10 forensic software so they -- he or she can make a
11 determination whether individual files or anything on that
12 piece of media is relevant to their case.

13 Q. And so at some point, do you hand the destination media
14 or the bit by bit hard drive to the case agent?

15 A. We make it available for them to review. It remains --
16 the actual hard drive itself containing the image file unless
17 it's truly extraordinary circumstances remain under our
18 control.

19 Q. And when you say make it available, it's for the law
20 enforcement to look for pertinent information; correct?

21 A. Correct.

22 Q. Now, what happens when the law enforcement officer has
23 completed the review?

24 A. The law enforcement officer informs the examiner that
25 the review is done. They're saying their CAIR has been

1 completed. It's now essentially back in the hands of the
2 examiner to take that process case with any files that's been
3 noted as significant by the case agent, we refer to those as
4 bookmarked files so they've been placed in bookmarks, and
5 it's up to the examiner to look at those bookmarks to verify
6 that one, items were bookmarked, and that those files that
7 were bookmarked actually are things, tangible things that are
8 gonna be understandable to the end user when they get the
9 file report.

10 Q. When you say bookmarked, is it -- is it -- can you just
11 describe that a little more in maybe simpler terms?

12 A. Sure. If I'm a person looking through the data, and I
13 come across a picture file, and this picture file is
14 significant to the case I'm investigating, I want to
15 essentially mark that in some way so I know later on that
16 that can become part of a final report.

17 The way that our forensic software does that is
18 referred to as bookmarking, and using the forensic software,
19 we can highlight that file and essentially tag it so it goes
20 into a special category. And in this case, I'm talking about
21 a picture file. I could give that bookmark a name such as
22 Pictures of Interest or Picture of Interest. And within that
23 bookmark title, that particular picture file that I was
24 interested in is going to be -- have a place holder.

25 Q. Is it a way to keep documents that might be relevant as

1 to an investigation in one area that you can easily look at
2 it?

3 A. Yes, that's the purpose.

4 Q. So once you receive the forensic image or the bit by bit
5 hard drive back with the bookmarks, what do you do?

6 A. Well, first and foremost, the forensic image never left
7 our possession. But once we're informed by the case agent
8 that they're done doing their review, the examiner now looks
9 at it, makes sure the bookmarks are in order. We generate an
10 electronic report from those items that were bookmarked by
11 the case agent.

12 That electronic report is then saved to some
13 optical media such as a CD or DVD or if there's enough -- so
14 much data that it's so big, maybe a Blue Ray disk. And the
15 purpose of that is then the case agent now has the
16 information that that case agent saved that's available for
17 them to review.

18 Q. And so is the bookmarks that the law enforcement officer
19 reviewed on the disk or the CD or the DVD that you've
20 created?

21 A. Correct.

22 Q. And how do you know that you've created that disk?

23 A. After we create the CD, DVD, Blue Ray disk, what have
24 you, we refer to that as Derivative Evidence or DE for short.
25 That's, uh, our lingo for it inside the lab. It's also known

1 as Results Media. Basically, it's gonna be the thing that
2 the officer or agent picks up at the end, and that's what's
3 gonna be what they bookmarked.

4 In order to identify that, we have two methods.
5 One is digital evidence or anything that comes into the lab
6 for that matter gets its own unique bar code so it's an alpha
7 numeric identifier that's specific to that particular piece
8 of media, and that's actually imprinted on the CD cover
9 itself. It's embedded on it. We also initial the CD or DVD
10 or Blue Ray disk with our initials to show that we're the
11 ones that created this disk.

12 Q. Once you've created that disk, is there a way to compare
13 that disk back to the original digital media that you
14 received into evidence to make sure that it is, um -- that
15 they match?

16 A. I'm not sure I understand your question.

17 Q. Okay. Is there a way to determine the Derivative
18 Evidence is truly from the digital media that it was taken
19 from?

20 A. Well, it's up to the examiner to place it on there.
21 When the CD, for example is made, another examiner takes a
22 look at it just to verify that it works, and that, in fact,
23 there's data on it.

24 Within the report itself, any files that have been
25 bookmarked, those files are referenced back to the their

1 source media where it came from. And any piece of media that
2 we get in the lab, we assign it an identifier, that bar code
3 I was telling you about.

4 So, for instance, if I have bookmarked a picture
5 file that happens to be called Picture.Jpeg, and I create a
6 bookmark and put that on the CD, when I look at that, I'll be
7 able to look at the picture.jpeg file, but it'll also say
8 this file came from this piece of media, this what we refer
9 to as an ORC number, O-R-C number, uh, which is that barcoded
10 number I make reference to.

11 Q. Are you able to compare the digital fingerprint or the
12 MD5 hash from the Derivative Evidence back to the original
13 media?

14 A. That would be possible, yes.

15 Q. And if those two matched, would you be able to determine
16 that the Derivative Evidence came from the digital media that
17 was originally provided to you?

18 A. Yes. Individual files will have their own hash values,
19 and we could look back at our original process case and
20 compare those individual hash values with what's in the
21 process case versus what's on the Derivative Evidence, the
22 results media, and verify that they are one in the same file.

23 MR. CHIU: Your Honor, is this a good time for a
24 break?

25 THE COURT: I think so. All right.

1 Ladies and gentlemen, we'll be in recess for
2 15 minutes. Remember don't discuss the case, don't
3 communicate about it, don't research any of the issues or
4 anything about the evidence, the participants, anything
5 related to the case, and don't form any opinions on any of
6 the issues. Thank you.

7 (Jury not present.)

8 THE COURT: We're on the record outside the members
9 of the jury. All counsel and the defendants present.

10 What's the issue with respect to Ms. Rodriguez
11 Lopez that you wanted to have her subject to recall?

12 Ms. Viramontes?

13 MS. DeWITT: I think it was actually Mr. Thomas.

14 MR. THOMAS: Yes, Your Honor. I got -- I asked
15 some questions where I got an objection beyond the scope, and
16 I know there were maybe technical details beyond the scope,
17 but, you know, the witness is from New York, and I don't want
18 to have to bring her back out here for our case. So I was
19 asking for some, you know, leniency for --

20 THE COURT: That's fine, but what is the subject
21 that you want to inquire about?

22 MR. THOMAS: Well, there are a couple questions
23 about the original interest in Mr. Santana that were beyond
24 the scope because the government just kind of brushed past
25 it, and I wanted to explore that.

1 THE COURT: So what's the relevance of that?

2 MR. THOMAS: Well, there's a lot of reasons.

3 Number one is whether there was something Mr. Santana was
4 doing at the airport itself -- or at the border stop itself
5 that drew attention or whether he was already on some kind of
6 list or under some suspicions for some other reason. We
7 never got an answer to that because --

8 THE COURT: But let's say it's the latter. What's
9 the relevance of that? What's the relevance either way?

10 MR. THOMAS: There shouldn't be any, you know,
11 guess that -- it's our main argument is that the government
12 targeted this individual. And this is the individual from
13 which they sent the informant in to the mosque that Santana
14 worships at, and that's how he found Mr. DeLeon and these
15 other people.

16 So to show in our minds what evidence there was of
17 agreement or conspiracy or predisposition. And a lot of
18 these things go to the entrapment instruction as to what
19 information the government knew about Mr. Santana or any of
20 the other individuals before they sent the informant. That's
21 been a large focus of Your Honor's with respect to our
22 entrapment --

23 THE COURT: Right. Except in terms of the timing,
24 at the time that he went to Mexico and was coming back --
25 well, at the time he was stopped at the border, he was

1 already emailing with his -- well, with the other defendants
2 in this case about his -- at least, I can't remember if it
3 was right before he went or after he came back or both, about
4 his plans to go down there to, um, you know, have weapons
5 practice or weapons training so this --

6 MR. THOMAS: Well, that's not in evidence yet.
7 That's why --

8 THE COURT: It's not in evidence yet, but it
9 doesn't -- that doesn't really matter. I mean, you all have
10 the discovery on it. I mean, so in terms of whether this
11 evidence that you're trying to introduce about why he was --
12 why that witness got information, it's irrelevant.

13 MR. THOMAS: Well, Your Honor, the jury -- I'm
14 assuming that when we get to the point of instructions and
15 whether we're gonna be able to get entrapment instruction,
16 it's gonna be based on what's come into court as evidence,
17 not just what's in the discovery because it's only the
18 information the jury heard.

19 THE COURT: Exactly.

20 MR. THOMAS: Right. And so at this point, there's
21 been no connection or no evidentiary connection of
22 Mr. Santana to any of the defendants. And I'm trying to
23 explore the basis of that connection because I want to know
24 if the one existed in January of 2012 was a month prior to
25 them sending the informant out to the mosque.

1 THE COURT: All right, Ms. DeWitt?

2 MS. DeWITT: Your Honor, the witness said that
3 there was a lookout, and that he was referred to her because
4 of that.

5 What he's talking about is somehow suggesting that
6 she's gonna be able to provide information about what the FBI
7 was or wasn't doing or somehow connect that to the
8 confidential source. The only way that they're going to be
9 able make that argument is if they can, in fact, introduce
10 evidence that would suggest that there was something else
11 that would connect somehow the FBI's actions to somehow some
12 kind of entrapment or some kind of chain there.

13 And so I would respectfully submit that what she
14 did that day is irrelevant in that connection because they
15 would have to prove what happened before, and they'd have to
16 prove what happened afterwards.

17 The fact is that she was, in fact, sent to
18 secondary and was interviewed at that time and that documents
19 were copied from him. She's already testified about that and
20 what's within her knowledge. And that before and after in
21 trying to suggest that this particular witness is somehow the
22 connector there, one, any connection that is there has
23 already been established and two, it's not -- it's not a --
24 it's not a -- it's not a meaningful connector, not from her.

25 THE COURT: Well, not -- in other words, your

1 argument is not from her because she's already testified to
2 the extent she has any knowledge that he was referred to --
3 it's Ms. Viramontes' witness so she's gonna have to respond
4 so I'll give her a chance to do that. I mean, you were the
5 one who examined her.

6 MS. VIRAMONTES: That's correct, Your Honor.

7 THE COURT: Correct. All right, I'm sorry. But
8 she can't testify -- well, I think she's already testified to
9 the extent that she had any knowledge or was allowed to
10 testify about what she was told which was just, um, he's
11 being referred to secondary, ask the five Ws. So how can she
12 be examined any further about why a third person, the person
13 who referred, what the motive was for that or the basis for
14 that?

15 MR. THOMAS: Well, Your Honor, I don't think she's
16 totally answered the question because I asked her what a
17 lookout meant, and her explanation wasn't much assistance so
18 I suggested something, and that was beyond the scope, and
19 that's as far as the inquiry went. You had me go on to my
20 next question.

21 THE COURT: So how can she testify about -- I mean,
22 she did -- someone asked her, and she did testify, I think it
23 was you, but she did testify as to what she was told to ask.

24 MR. THOMAS: No, I understand. I think that was
25 co-counsel's questions. What I was asking her is what drew

1 the secondary inspection, and she said it was a lookout.

2 THE COURT: Right.

3 MR. THOMAS: And I asked her what a lookout was,
4 and that's where it kind of ground to a halt.

5 THE COURT: And someone asked her what did the
6 lookout tell you to ask, and she said just the five Ws.

7 MR. THOMAS: It wasn't what the lookout told to ask
8 that I'm interested in. I'm looking at what was the lookout?
9 What does that mean?

10 THE COURT: First of all, it would be hearsay;
11 right? If the lookout told her why he was referring
12 Mr. Santana to secondary. That would be hearsay.

13 MR. THOMAS: In some degree, but it's not really
14 whether it's true or not that I'm concerned with. It's what
15 drew the secondary inspection, what was the reason.

16 THE COURT: Well, that is truth of the matter,
17 isn't it? You want to know why. You want to know why --

18 MR. THOMAS: I'll give you an example. If the
19 reason why is because they thought he was terrorist, it's not
20 whether or not he thought he was a terrorist is true or not.
21 That's not what I need to know. I need to know the existence
22 of what that reason was. What was the reason? What
23 information did they have before?

24 THE COURT: Well, how can she testify to that?

25 MR. THOMAS: Well, I don't know that she can.

1 Until I ask the question, we won't know.

2 THE COURT: Right.

3 MR. THOMAS: Maybe she doesn't know.

4 MS. DeWITT: It's not relevant.

5 THE COURT: Ms. Viramontes.

6 MS. VIRAMONTES: I don't think her testimony today
7 was accurate and I would have impeached her because I don't
8 think what she said about the chain of what happened is
9 consistent with her report. I think that got a little
10 muddled between me getting flustered and her getting
11 flustered. The lookout telling her to ask five questions I
12 don't think is consistent with what she wrote in her report.

13 THE COURT: You don't get to recall her because you
14 think you messed up in your cross-examination.

15 MS. VIRAMONTES: I have one other thing. The other
16 is that we don't know the scope of Mr. Santana's activities.
17 We don't know if he was engaged in activities that drew
18 attention to her outside what is being alleged by the scope
19 of conspiracy.

20 MS. DeWITT: Your Honor, to the extent that there
21 was some other reason for them to do a secondary given the
22 fact that there was a lookout, they could have asked those
23 questions. I mean she said exactly what happened. There was
24 a lookout for him, he was referred to her, and she did the
25 follow-up that she does as part of her regular job.

1 You know whether it was because somebody thought he
2 was a terrorist or for some other reason, the facts are that
3 she did a secondary and that has already been established.

4 MR. THOMAS: Your Honor, the best way for me to say
5 this is if Mr. Santana's behavior or what he possessed in
6 that port or terminal was the first time that the FBI drew
7 any suspicion to him, that's an important fact.

8 THE COURT: That may be, but I don't think this
9 witness can testify to that because all she knows is what she
10 testified to that the -- he was referred to her and she was
11 told to ask those five questions. That's my problem with
12 what you're suggesting.

13 MR. THOMAS: Right, Your Honor, but you see how
14 it's not what the primary inspector thought was whether it
15 was true or not that is important. It's the timing of it.
16 Did Santana act in some way that drew their attention for the
17 first time? Was there something that he did or were they
18 already looking for him?

19 And when she said lookout, I know what I think that
20 means be on the look out that there are already suspicions
21 raised that's an important fact with respect to entrapment.
22 There's like one or two questions I only planned to ask after
23 I got cut off. I don't have, you know, a whole ten minutes
24 worth.

25 THE COURT: Well, nobody gets to do a do over so to

1 the extent I'll let you reopen to ask a limited question and
2 the only thing that's really persuasive to me at this point
3 is that -- and I do think that she can testify as to anything
4 that she was told -- anything other than what she was told to
5 do because that's an exception to the rule against hearsay
6 because that goes to, you know, future action. That's the
7 exception to the rule against hearsay that that would fall
8 into.

9 If you want to ask her that, I'll allow you to ask
10 her that as to what she was told. If there's something in
11 the report that goes directly to that, you then can follow-up
12 with that. I'll allow you to do that, Ms. Viramontes, but it
13 has to be on that one limited point.

14 MS. VIRAMONTES: Thank you.

15 THE CLERK: This court's in recess.

16 (Recess taken)

17 THE COURT: Let the record reflect the presence of
18 all members of the jury, all counsel and the defendants
19 present. You may continue.

20 MR. CHIU: Thank you, Your Honor.

21 Q. Investigator Goldsmith, I think we left off at is it
22 possible to prepare a digital fingerprint from the derivative
23 evidence you create with the original media that you were
24 given to conduct a forensic examination?

25 A. To clarify it is possible to compare individual files

1 that are on that results media, also known as derivative
2 evidence, to the files that are from the original source
3 media to confirm that they have not been tampered with or
4 somehow altered.

5 Q. Are you familiar with -- actually, let me take a step
6 back. How long does that entire process take? If I am a law
7 enforcement officer and I'm interested in having a piece of
8 digital media examined, how long does that entire process
9 takes?

10 A. It varies from case to case depending on a number of
11 factors. How many pieces of media are in the case to be
12 examined? There can be multiple computer systems or just a
13 single computer system. How much time the case agent has to
14 review the data that's being put up for review. How complex
15 the case is. Are we looking for just specific directed
16 things or is it more of a global review of an all
17 encompassing look at all the data. It's really quite
18 variable depending upon a number of factors. So it could be
19 as little as a few hours. It could take months.

20 Q. And I'm just gonna remind you to slow down that would be
21 appreciated.

22 Are you familiar with what's called a loose media
23 kiosk?

24 A. Yes, I am.

25 Q. And what is a loose media kiosk?

1 A. A loose media kiosk is a console or a piece of equipment
2 that was created by the FBI and it is placed in various
3 computer forensic labs that the FBI has a partnership with.
4 It's designed to allow the rapid review of loose media such
5 as thumb drives, memory cards, CDs, DVDs. It's not designed
6 to do an exhaustive examination of a hard drive of a
7 computer. It's basically designed to allow a user with a
8 limited amount of computer training to be able to, if you
9 will, plug the thumb drive into this loose media kiosk and be
10 able to look at the data in a forensically sound manner.

11 Q. And are you able to make a copy of the digital media
12 through the loose media kiosk?

13 A. You are able to extract individual files from the
14 digital media that's being reviewed and copy out those
15 individual files to a blank CD or DVD.

16 Q. Is this also called a self-service kiosk?

17 A. That's it's nickname, yes, but it's officially called
18 the loose media kiosk.

19 Q. And are agents or law enforcement officers able to just
20 walk up to this loose media kiosk and use it?

21 A. They're able to use it pretty much as they would like.
22 We have examiners available to assist them, but it is
23 primarily designed for a case agent to use on their own.

24 Q. Have you used the loose media kiosk?

25 A. Yes, I have.

1 Q. And approximately how many times?

2 A. Approximately 25 times.

3 Q. Are you familiar with how it works?

4 A. Yes, I am.

5 Q. What are the different components of the loose media
6 kiosk?

7 A. Well, at the risk of dating myself, the loose media
8 kiosk is basically just a traditional computer tower, but
9 it's housed within a console that looks like an arcade video
10 game from the '80s. It's got a keyboard in front of it, it
11 has a screen and a track ball. The screen itself is actually
12 a touch screen so that the user can give the loose media
13 kiosk commands by just touching the screen or using the
14 keyboard or track ball combination.

15 Q. Are you able to plug digital media into the loose media
16 kiosk?

17 A. Yes, you are.

18 Q. And what happens when you plug digital media into the
19 loose media kiosk?

20 A. Just as in a forensic examination, the computer that's
21 the heart of the loose media kiosk has its ports, the
22 connections that the thumb drive, for example, goes into.
23 They are write blocked. So while the computer is able to
24 read the information from that thumb drive, the computer
25 that's doing the reading cannot change or alter the data

1 that's on that thumb drive.

2 Q. And what's, again, what's the purpose of having the
3 kiosk by write blocked?

4 A. The purpose is to allow a user to see the data that's
5 on, for example, the thumb drive without altering that data
6 or causing any changes to the source digital media.

7 Q. So walk me through the process. If I am a law
8 enforcement agent and I have a two gigabyte SIM drive, can I
9 plug it into the loose media kiosk?

10 A. You cannot plug in a SIM card. A SIM card is
11 proprietary to a cell phone, but such as a micro SD card, an
12 SD card, any sort of other memory card, a thumb drive, a CD,
13 a DVD all of those items can be plugged into the loose media
14 kiosk.

15 Q. What about a cell phone?

16 A. The cell phone is actually we use a different process
17 for that. We do essentially have a self-serve station for
18 that, but that does not involve the loose media kiosk. Other
19 than if that particular cell phone has a micro SD card in it,
20 then we could process that independent through the loose
21 media kiosk.

22 Q. So for the cell phone and the other digital media, the
23 kiosk, the purpose is the same which is to create a --
24 extract files that are inside those items; is that correct?

25 A. That is the purpose, yes.

1 Q. And both of them are write blocked?

2 A. Not for the cell phones, no.

3 Q. Now, how is a copy of the items that you wish to extract
4 off the item that is placed in the kiosk made?

5 A. The loose media kiosk essentially reads the directory
6 information from the thumb drive, for example, that was
7 placed in the loose media kiosk and it essentially puts up a
8 map of where those files are. Additionally, it categorizes
9 the files by the type of files they are. For instance it
10 will inform you there are 35 picture files on this thumb
11 drive. They're also four Word documents and six PDF files
12 and X number of spreadsheet files. It allows, the loose
13 media kiosk allows you then to preview those files on the
14 loose media kiosk to make a determination if that is
15 something that you as the case agent feel is relevant to your
16 case.

17 Q. Are you able to once the agent has or the law
18 enforcement officer has selected the items that it wants to
19 make a copy of, is it possible to insure that the copies
20 created on to the disk are forensically sound and accurate as
21 compared to what was on the digital media?

22 A. Yes.

23 Q. How do you do that?

24 A. Just as you can make an MD 5 hash or make a hash of an
25 entire piece of media, individual files can be hashed as

1 well. When the report is generated from the loose media
2 kiosk, it should contain a hash value of all the files that
3 are being exported from the loose media kiosk to the CD or
4 DVD, whatever media that's being used to store that.

5 Q. And so if I was an agent and I made the copy and placed
6 the files I identified and burned it on to a disk, is it
7 possible to compare the digital fingerprint on the individual
8 file with the file on the original piece of evidence?

9 A. Yes.

10 Q. And the cell phone tool that you discussed earlier,
11 what's the name of that kiosk?

12 A. We have multiple cell phone tools, but one that is
13 primarily used in the kiosk is referred to as a Cellebrite
14 device that's C-e-l-l-e-b-r-i-t-e.

15 Q. And is it possible using that machine as well to create
16 the copy of digital data that is forensically sound and that
17 is a true and accurate copy?

18 A. No.

19 Q. Not possible.

20 A. Cellebrite is designed to extract information from cell
21 phones primary. Cell phones by their nature contain what is
22 known as volatile memory. The volatile memory, the fact that
23 the time is constantly being updated on the phone when you
24 turn it on prevents essentially a static snap shot of all of
25 the media that can then be considered forensically sound.

1 The mere act of turning on a phone, you are causing changes
2 to the data on that phone.

3 Q. Are you able to extract the contacts from that?

4 A. Yes.

5 Q. And would you be able to compare the list of contacts
6 that you extract from that with the cell phone to compare
7 that it's accurate?

8 A. Yes.

9 Q. And do you once an agent makes the copy of the digital
10 media, do you personally often check to make sure that the
11 documents or items placed on the disk are in fact what was on
12 the original drive?

13 A. If I am the person assisting the case agent in these
14 with the loose media kiosk, I always recommend, strongly
15 recommend to the case agent that after the files they have
16 have been burned to the CD, to take that CD assuming it is a
17 CD over to a computer that's completely different. Let's put
18 the CD in that other computer. Make sure it runs. Make sure
19 the files that they've burned or saved to that CD are there
20 and essentially visually inspect them to see if they appear
21 to be identical.

22 Q. Whether it's a cell phone contacts or digital media
23 photographs or videos on the cell phone, you're able to
24 compare what you have taken off of it with the contents on
25 the original cell phone; correct?

1 A. Certainly.

2 Q. And by doing that are you able to determine whether they
3 are true and accurate copies?

4 A. To the best of visually examining it, yes.

5 Q. And just to be clear that's both for the loose media
6 kiosk and the Cellebrite cell phone extraction?

7 A. Correct.

8 Q. Just one last question on this. What if a cell phone
9 has a micro SD card in it?

10 A. Okay.

11 Q. Where would you plug the micro SD card?

12 A. The micro SD card could be processed by the Cellebrite.
13 It is our recommendation that it be processed separately
14 through the loose media kiosk.

15 Q. And is the reason for that because you can do the
16 digital fingerprint?

17 A. That is one of the reasons, yes.

18 Q. What's the other reasons?

19 A. Other reasons is by processing the micro SD card through
20 the loose media kiosk, it allows the case agent more control
21 over previewing particular files that the case agent might be
22 interested in. Cellebrite tends to give you an all or
23 nothing approach. It will export all of the files or
24 sometimes none of the files, and if you make a determination
25 that maybe two-thirds of the files are not relevant to your

1 case, it's a great time saver to be able to preview them
2 through the loose media kiosk.

3 Q. Okay. So turning to your investigation in this case,
4 were you asked to conduct a forensic examination of certain
5 digital media?

6 A. Yes, I was.

7 Q. Can you describe the items of evidence that you were
8 asked to review?

9 A. There were actually two separate examinations that I was
10 asked to do. The first one occurred in December 2012, that
11 was to extract data from an iPod Nano and also an iPad
12 device.

13 Q. Do you know just off the top of your head how many
14 gigabytes of data or gigabytes does the iPod Nano hold?

15 A. Yes.

16 Q. How many?

17 A. Eight gigabytes.

18 Q. And as you were saying earlier, one iPod Nano could hold
19 thousands of songs; is that correct?

20 A. Yes, depending upon the size of the songs.

21 Q. Now, I'm gonna show you what has been admitted as
22 Government's Exhibit 10-A35 if you could talk at look at
23 this. Do you it that in front of you?

24 A. Yes, I do.

25 Q. Do you want to pull it out?

1 A. There are two separate folders.

2 Q. Can you take a look inside them and do you recognize the
3 item that you were asked to examine in this case?

4 A. Yes, I do.

5 Q. And is this consistent with the item that you reviewed?

6 A. Yes, it is.

7 Q. How do you know that?

8 A. It has on it a bar code that was assigned to it when it
9 was first introduced to the RCFL. It's consistent with what
10 I reviewed when I looked at the piece of media. When I
11 returned it back to the evidence control center, I initialed
12 the bag that was sealed and returned to the evidence control
13 center.

14 Q. Is there a serial number on the back of that?

15 A. There is.

16 Q. I won't bother you with reading it. But have you since
17 conducting the review, have you looked at that serial number
18 and compared it with your reports?

19 A. Yes, I have.

20 Q. Is it the same iPod?

21 A. Yes, it is.

22 Q. Were you able to conduct a forensic examination
23 undergoing the process you described earlier to this iPod?

24 A. Yes, I did.

25 Q. Now, I'm going to show you what has been marked for

1 identification as Government's Exhibit 86. If you could look
2 at that yourself because that has not been admitted into
3 evidence at this time.

4 A. Okay.

5 Q. Do you recognize that item?

6 A. Yes, I do.

7 Q. What is it?

8 A. It is an -- I believe it's a Blu-Ray disk. It's what I
9 produced as a result of doing my examination of the iPod and
10 the iPad.

11 Q. And does that contain the derivative evidence that you
12 were able to place on to the Blu-Ray disk from the iPod?

13 A. Just for correction, I'm looking at the service request
14 number. This is actually for the second service request I
15 did for the computer. I apologize.

16 Q. Do you want to look at the other item? Thank you.

17 A. Yes. I have now the derivative evidence from the
18 iPod/iPad examinations.

19 Q. Does it have your initials on it?

20 A. Yes, it does.

21 Q. And does it have a bar code that you recognize?

22 A. Yes, it does.

23 Q. Is that the disk where you put the derivative evidence
24 on?

25 A. Yes.

1 MR. CHIU: Your Honor, at this time the government
2 moves into evidence Government's 86.

3 THE COURT: Any objection?

4 MR. AARON: No objection.

5 THE COURT: Thank you.

6 MR. THOMAS: No objection, Your Honor.

7 THE COURT: 86 is ordered admitted. You may
8 publish.

9 (Exhibit 86 was admitted.)

10 BY MR. CHIU:

11 Q. I'm gonna show you what has been marked as Government's
12 Exhibit 705 or what has already been admitted into evidence.
13 It might be a little heavy so if you could put it to the
14 right of you. Do you recognize that item?

15 A. Yes, I do.

16 Q. What is it?

17 A. It is an EMachines tower computer.

18 Q. Is there a serial number on that machine?

19 A. Yes, there is.

20 Q. And without having to read it, have you had a chance to
21 review the serial number on that EMachine?

22 A. Yes, I have.

23 Q. Is that the item that you performed a forensic
24 examination on or were asked to?

25 A. Yes, it is.

1 Q. And in undergoing or conducting the forensic
2 examination, did you go through the process which we
3 discussed earlier?

4 A. Yes, I did.

5 Q. And were you able to create a disk that had the
6 derivative evidence from that EMachine?

7 A. Yes, I did.

8 Q. And is that disk in front of you as well? You know
9 what, strike that. I don't think it's in front of you.

10 Do you recall creating a disk with the digital
11 evidence?

12 A. Yes, I do.

13 Q. Did it have the bar code?

14 A. Yes, it did.

15 Q. And did it have your initials on it?

16 A. Yes, it did.

17 MR. CHIU: Your Honor, I have no further questions
18 for this witness.

19 THE COURT: Thank you. Before we have
20 cross-examination of this witness, do we want to go back to
21 the last witness and take her out of order?

22 MS. DeWITT: I think that would be fine,
23 Your Honor.

24 THE COURT: So ladies and gentlemen, there were
25 some additional questions for Ms. Rodriguez-Lopez and so

1 although this witness hasn't been cross-examined yet, we're
2 gonna put a witness on in what's called out of order. So
3 we're gonna recall Ms. Rodriguez-Lopez at this time.

4 Thank you. Please come forward. You don't need to
5 be resworn as you were previously sworn and your testimony is
6 still given under penalty of perjury. You understand that?

7 THE WITNESS: Yes.

8 THE COURT: All right. Ms. Viramontes or
9 Mr. Thomas, who wants to go first?

10 MS. DeWITT: I thought the questions were only
11 going to be a couple follow-ups from Mr. Thomas.

12 THE COURT: No. I said then I'd let Ms. Viramontes
13 follow-up with that so go ahead.

14 MR. THOMAS: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. THOMAS:

17 Q. Afternoon again, Ms. Rodriguez-Lopez.

18 A. Good afternoon.

19 Q. A couple questions I had to follow-up from what we were
20 talking about before, and I want to direct your attention to
21 our conversation about the lookout you were informed of.

22 A. Yes, sir.

23 Q. Who was the primary inspector for Mr. Santana?

24 A. I don't remember who was the primary inspector, sir.

25 Q. Who informed you of the lookout?

1 A. When Mr. Santana came in to primary, once the lookout
2 was established, I was told by my supervisor to do the
3 secondary.

4 Q. All right. So it was your supervisor that told you the
5 lookout not the primary inspector?

6 A. Exactly.

7 Q. All right. Who was your supervisor's name?

8 A. It was Mr. Croston.

9 Q. Can you spell that?

10 A. It's C-r-o-s-t-o-n.

11 Q. And is it Mr. ?

12 A. Yes, sir. Supervisory Customs and Border Protection
13 Officer Croston.

14 Q. Thank you. And what did Mr. Croston tell you
15 specifically?

16 A. That there was a person coming in with a lookout.
17 That's all.

18 Q. And did you already know what to do based on that or did
19 he give you more instruction?

20 A. Basically, the person comes in and you start doing
21 your -- preparing for your interview.

22 Q. Did he tell you what reason Mr. Santana drew the lookout
23 was?

24 A. No, sir. He just told me that Mr. Santana had a
25 lookout.

1 Q. Did he tell you what questions to ask Mr. Santana?

2 A. No, my supervisor did not tell me.

3 Q. All right. All he told you was you need to do a
4 secondary inspection and then you did your thing?

5 A. Yes, sir.

6 Q. All right. There was testimony you gave during direct
7 that at some point Mr. Santana asked you if he could pray?

8 A. Yes, sir.

9 Q. And in response to that, you went and got his prayer
10 rug?

11 MS. DeWITT: Objection, Your Honor. This is beyond
12 what we had agreed on.

13 THE COURT: Well, it's not beyond the scope of
14 direct, but it is beyond what I said I would permit so make
15 it very short.

16 MR. THOMAS: I will, Your Honor. Thank you.

17 Q. You said that Mr. Santana asked you to retrieve his
18 prayer rug?

19 A. Yes, sir.

20 Q. Was that the first time you went into Mr. Santana's
21 suitcase or had you already gone through Mr. Santana's
22 suitcase?

23 A. Yes.

24 Q. Are you sure about that?

25 A. Yes, sir.

1 Q. Are you sure you didn't already go through the
2 belongings and make copies of the books before he asked you
3 to pray?

4 A. No, sir, I did not.

5 MR. THOMAS: Okay. I'm going to have an exhibit
6 marked, Your Honor.

7 THE COURT: Ms. Viramontes, is this the area that
8 you brought up at the recess with respect to the report?

9 MS. VIRAMONTES: I believe so, Your Honor.

10 THE COURT: All right. That's fine.

11 MR. THOMAS: Your Honor, since I only have one
12 copy, I'll show it to the government first before I give it
13 to you.

14 THE COURT: That's fine.

15 So Ms. Viramontes, does this mean you're not going
16 to want to get into that?

17 MS. VIRAMONTES: That's correct. Mr. Thomas will
18 be doing that. Thank you, Your Honor.

19 MR. THOMAS: May I approach the witness,
20 Your Honor?

21 THE COURT: Yes, you may.

22 BY MR. THOMAS:

23 Q. Ms. Rodriguez-Lopez, I'm handing you what's been
24 previously marked as Defendant's 6001 for identification.
25 Can you take a look at that, please? It's a five-page

1 document and let me know when you've reviewed that.

2 In particular there is a part on the third page
3 that has some red brackets around it. Can you take a look at
4 that?

5 A. Yes, sir.

6 Q. And let me know when you're finished reading that.

7 A. Yes, sir.

8 Q. Okay. Does that refresh your memory as to whether or
9 not you had opened the suitcase prior to him asking you about
10 praying?

11 A. No. No, sir.

12 Q. Doesn't it say that --

13 MS. DeWITT: Objection, Your Honor. Improper.

14 THE COURT: You can't read the contents of it in.

15 MR. THOMAS: That's fine, Your Honor. I can mark
16 just on page 3 of that document.

17 MS. DeWITT: Objection, Your Honor.

18 THE COURT: What is it you're trying to do?

19 MR. THOMAS: Well, it didn't refresh her memory so
20 now I'm gonna admit it to impeach her.

21 THE COURT: How are you gonna do that?

22 MR. THOMAS: Well, I'm gonna ask her to focus on
23 page 3, that it's her summary and have her admit the document
24 as foundation.

25 THE COURT: Foundation for what?

1 MR. THOMAS: Foundation for her statement.

2 MS. DeWITT: Improper impeachment, Your Honor.

3 THE COURT: Sustained.

4 BY MR. THOMAS:

5 Q. Ms. Rodriguez-Lopez, that five-page document, can you
6 tell the Court what that is?

7 A. That's the summary --

8 MS. DeWITT: Objection, Your Honor. Calls for
9 hearsay.

10 THE COURT: All right. The document itself can't
11 come into evidence because it's hearsay. Do you want to
12 approach the witness and point her to a particular section?

13 MR. THOMAS: I certainly will.

14 THE COURT: Go ahead. Why don't you do that.

15 BY MR. THOMAS:

16 Q. Ms. Rodriguez-Lopez, there's on page 3 of that document
17 I've circled and underlined two consecutive paragraphs. One
18 that contained a time and the next a time a little bit later.

19 A. Yes, sir.

20 Q. Did you review those paragraphs?

21 A. Yes.

22 Q. Do you see in either of paragraph whether or not the
23 order of your testimony is consistent with what you said
24 before?

25 A. Yes, sir.

1 Q. Would you agree with me that Mr. Santana asked you to
2 pray after you had already made copies of the books that were
3 in his luggage?

4 A. Yes, sir.

5 Q. Okay. So that was -- you had obviously already opened
6 the suitcase to see that there were books and copied them
7 before he asked you to pray.

8 A. It was all during the same time, sir.

9 Q. No, I know, but the original question was which happened
10 first, and you said you had never been in his suitcase until
11 he asked you for the prayer rug.

12 A. Yes, sir.

13 Q. But according to that statement, you had actually gone
14 through the suitcase and cataloged and copied his books a
15 minute before he asked you for his prayer rug.

16 A. It's all in the same time line, sir.

17 Q. Well, the original question is the first time you went
18 in his suitcase when he asked you for the prayer rug, that is
19 incorrect; right? Because you had already copied the books
20 before he asked you for the prayer rug?

21 A. Yes, sir.

22 MR. THOMAS: Okay. I have no further questions,
23 Your Honor.

24 THE COURT: Ms. Viramontes.

25 MS. VIRAMONTES: Nothing further, Your Honor.

1 THE COURT: Ms. DeWitt.

2 MS. DeWITT: May I have one moment, Your Honor?

3 I have nothing further, Your Honor. Thank you.

4 THE COURT: All right. Thank you. You may step
5 down. You are excused.

6 If the last witness could retake the witness stand,
7 Mr. Aaron, you may cross-examine.

8 MR. AARON: Yes, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. AARON:

11 Q. Mr. Goldsmith.

12 A. Hello.

13 Q. Good afternoon, sir.

14 A. Good afternoon.

15 Q. You were at the Orange County Sheriff's Office beginning
16 in 1990?

17 A. Correct.

18 Q. And from 1990 to 2001, what was your assignment?

19 A. From 1990 to 2001, I was a deputy sheriff, that's a rank
20 within our department.

21 Q. And as part of your duties, you did not do computer
22 forensic examinations; correct?

23 A. That is correct.

24 Q. Then you transferred to the economics crime unit;
25 correct?

1 A. Yes.

2 Q. And you were in that unit for two years?

3 A. Uh, closer to five.

4 Q. Well, that would be -- fraud would be a subset of that
5 unit?

6 A. Correct, yes, sir.

7 Q. All right. So you were in the broader economics crime
8 unit from 2001 to 2003. 2003 to 2006 you were in the fraud
9 unit.

10 A. Actually, the chronology is I was promoted to
11 investigator in 2001. My initial stop, if you will, was at
12 background/professional standards, Internal Affairs. I
13 worked that for a year-and-a-half before being transferred to
14 economic crimes.

15 Q. So you were at IA for a year-and-a-half and then you
16 went to economic crimes?

17 A. Yes, sir.

18 Q. In all three of those assignments or all two of those
19 assignments, however we categorize it, economic crimes,
20 fraud, internal affairs, you did you not do computer forensic
21 examinations; is that correct?

22 A. That is correct.

23 Q. The first time you started doing such examinations is
24 when you went into the computer forensic unit in 2006; right?

25 A. Correct.

1 Q. During the time before you were investigator -- I'm not
2 sure of the ranks in the Orange County Sheriff's Office. Is
3 it deputy, detective, investigator, sergeant or is it deputy,
4 investigator, sergeant?

5 A. The rank structure is Deputy Sheriff I, you're out of
6 the academy. After certain amount of time and experience,
7 you can promote to Deputy Sheriff II. Generally speaking,
8 Deputy Sheriff IIs move from jail to whatever their initial
9 assignment is to patrol. Deputy Sheriffs II may promote to
10 other ranks one of which is investigator or they can promote
11 directly to sergeant which is a supervisor position within
12 our department. In other words, you do not have to go from
13 deputy to investigator to sergeant.

14 Q. I see. You do not have any master's degree, any
15 graduate degree in computer science?

16 A. I do not.

17 Q. You do have any bachelor degree in computer science or
18 computer engineering?

19 A. I do not.

20 Q. No associate of arts degree in those subjects?

21 A. No, I do not.

22 Q. You do have according to your curriculum vitae, you do
23 have 1100 hours of training?

24 A. Over 1100 hours, yes, sir.

25 Q. And much of that training is by private vendors?

1 A. I would say a good percentage of it is. Much of it was
2 also provided by California DOJ, California Department of
3 Justice which they have their own hi-tech crime unit where
4 they actually train forensic examiners, that's part of the
5 program. And they have a whole curriculum that law
6 enforcement officers can go through to learn how to be
7 forensic examiners.

8 Q. Right. So most of -- all of your training is either
9 from private vendors or through law enforcement?

10 A. That would be a fair statement, yes, sir.

11 Q. You don't have any training or certifications from like
12 U.C. Berkeley or Stanford or anything like that in computer
13 forensics?

14 A. I do not.

15 Q. And 1100 hours works out to about 28 weeks of 40 hours a
16 week?

17 A. That sounds approximately correct, yes, sir.

18 Q. Before you started as a deputy sheriff in 1990, had you
19 ever worked for a non-law enforcement computer company?

20 A. No, I did not.

21 Q. Or an Internet company?

22 A. No, I did not.

23 Q. Or a telecommunications company?

24 A. No, sir.

25 Q. Since that time, since 1990, have you ever worked for a

1 company like that?

2 A. I haven't worked for a company. I am an instructor of
3 computer forensics at Fullerton College.

4 Q. I'm sorry. I couldn't hear that answer.

5 A. I have not worked for a company in that capacity. I do
6 teach classes through Fullerton College on a computer
7 forensics workshop. I also teach various computer forensics
8 related classes through our advanced officer training course
9 that is put on through the Sheriff's Department.

10 Q. My question was working as an employee or as a computer
11 engineer you have not done that.

12 A. That is correct.

13 Q. All right. Thank you. One of the certifications you
14 had was from a private vendor called Encase; right?

15 A. The vendor is actually Guidance Software. They make the
16 software called Encase E-n-c-a-s-e.

17 Q. Right. You're an Encase certified examiner in '08 and
18 then again in 2010.

19 A. Correct.

20 Q. And that's Encase is a product, a software which is
21 designed by Guidance Software or marketed by them?

22 A. Produced and marketed by them, yes.

23 Q. Now, the classes that you teach are you at the professor
24 level, adjunct professor?

25 A. Adjunct instructor that is for Fullerton College. At

1 Advanced Officers Training, I'm just an instructor.

2 Q. And that Fullerton College is a community college?

3 A. Yes, sir.

4 Q. And that's a part-time job you have?

5 A. Correct.

6 Q. Have you published any papers on computer forensics?

7 A. I have not.

8 Q. And in this case did you use Encase to create the images
9 of the drives?

10 A. No, I did not.

11 Q. Did you use it to search the drives?

12 A. No, I did not.

13 Q. If the -- when you're obtaining data, when you're
14 creating a forensic copy of the source drive, you're not
15 vouching for the truthfulness of any of the data that you're
16 making a copy of; correct?

17 A. I'm not sure I understand when you say the truthfulness
18 of the data. I'm not quite sure I understand.

19 Q. Let me be more clear. What you're saying, what you're
20 telling the jury is you made a true and accurate copy, but
21 whether what's in that file or that drive you don't know if
22 it's true or not.

23 For example, if there's an email dated January 13,
24 2012, you don't know if the correct date is January 13, 2012
25 or some other date?

1 A. No, I do not.

2 Q. And in fact speaking of dates, on computers it's
3 possible to change the date on a computer to a different date
4 than the date that it actually is; correct?

5 A. Yes, that is possible.

6 Q. So in other words, one can write an email and it could
7 go out, but it would have a different date. You could write
8 it on January 1st, but you could have changed the date so
9 that it reads July 1st?

10 A. Well, that is possible. There are markers within the
11 email that would most likely show what the true date is.

12 Q. In this case did you personally wipe all of the staging
13 media?

14 A. No, I did not.

15 Q. So you relied on another person to do that.

16 A. That is correct.

17 Q. If the staging media is not wiped or is only partially
18 wiped, then there can be data which corrupts the forensic
19 image; correct?

20 A. Well, I would never say it's impossible. I'm unaware of
21 that occurring. The mechanism that's used to create the
22 forensic image, which is referred as to an EO-1 file that
23 essentially has within it self-contained verification markers
24 to insure the integrity of the information that's being
25 captured by the image regardless of what media it's being

1 copied to.

2 Q. But that's one of the reasons why you wipe the staging
3 media is to avoid corruption or so you can get an accurate --
4 a true and accurate forensic copy; right?

5 A. It's more or less designed to be a fail safe mechanism,
6 but yes, you're correct.

7 Q. You said that once you create the -- you've gotten the
8 staging media, you've created the forensic image and then you
9 put on the index search function and index. Where do you get
10 those from?

11 A. The forensic software that we used to do the processing
12 at least in this particular case is referred to as FTK that
13 stands for Forensic Tool Kit that is manufactured by Axis
14 Data.

15 Q. And Axis Data again is a private vendor?

16 A. Yes, sir.

17 Q. It's not a law enforcement company?

18 A. Correct.

19 Q. Or an academic enterprise?

20 A. Correct.

21 Q. Do you yourself write code?

22 A. A very limited amount, yes, sir.

23 Q. Are you familiar with the programming behind FTK?

24 A. No, I'm not.

25 Q. The MD-5 hash value does not show you the contents of a

1 drive; correct? It's a digital fingerprint identifying the
2 drive; right?

3 A. Yes, sir.

4 Q. So in other words, you can have -- you could tell us
5 what the MD-5 hash value is for a drive, but from what you
6 told us, we wouldn't be able to know what's actually on that
7 drive.

8 A. Yes, that is accurate.

9 Q. Two drives can have different MD-5 hash value numbers,
10 drive A and drive B, but they can share files; right?

11 A. Yes, sir.

12 Q. So those two computers could be completely dissimilar or
13 they could be similar in whole or in part?

14 A. Yes, sir.

15 Q. When you do the search function, you use that to create
16 the bookmarks; true?

17 A. You can create a bookmark a number of different ways.
18 For instance, if you're just browsing the directory, the
19 folder structure, and you happen to run across a particular
20 file that you find to be of interest, you can just bookmark
21 it on the spot. The purpose of performing an index search is
22 to hopefully quickly find files that have the terms that
23 you're interested in, review those files, and then if those
24 files are relevant to your case, then you can bookmark them.
25 So the book marking process is not limited solely to the

1 index search, no, sir.

2 Q. But you can run searches for individual terms like
3 Al Qa'ida?

4 A. Absolutely.

5 Q. Or Xbox?

6 A. Yes.

7 Q. Or the Masons or UFOs or anything you like?

8 A. Yes.

9 Q. And you can run a search, whatever that search may be,
10 picks up say one percent of that drive; right?

11 A. I'm not sure I follow you on that one.

12 Q. Let's say you come up with a search term and it's found
13 in one percent of the files of that drive. It would pick up
14 that one percent?

15 A. Yes.

16 Q. So if you pick certain search terms, you may get some or
17 all of the entire file; right, depending on what search terms
18 you use?

19 A. The way it works is for instance if I'm conducting the
20 search for the word Goldsmith and the word Goldsmith appears
21 in 25 different files on the hard drive that we're looking
22 at, the software will essentially highlight those 25 files
23 and illustrate that the word Goldsmith appears up here in
24 this file, down here in this file. And then it's up to
25 reviewer to make a determination of those 25 files that have

1 been identified is this relevant to your case based on the
2 content.

3 Q. Exactly. So you can cherry pick the type of information
4 that you want by selecting the search term.

5 A. Yes, absolutely.

6 Q. So in other words, there may be other data on the drive
7 other than what was revealed in the search terms.

8 A. Oh, yes, absolutely.

9 Q. Counsel was asking you some questions about comparing
10 one digital device from one drive to another drive and you
11 said you can do a file-by-file comparison. Do you recall
12 that testimony?

13 A. Yes, I do.

14 Q. So in other words, you could say I want to make sure I
15 made a true and accurate copy of the file on the forensic
16 image. I can compare that to the source drive; right?

17 A. Correct.

18 Q. You can't compare it drive to drive, but you can compare
19 it as many individual files as you want to?

20 A. You can compare as many individual files as you want and
21 you can also compare the source drive and MD-5 hash with
22 another drive to make the determination if they contain the
23 exact same data. So yes, you can compare one specific drive
24 to another and compare their respective hashes.

25 Q. Right. But their respective hashes won't tell you the

1 content that's on the drive. It will only tell you the hash
2 value number.

3 A. Well, if the hash values are identical on both drives,
4 then the data within those drives will be identical which
5 would mean all the files would be identical.

6 Q. But if you do a file-by-file comparison, there can be a
7 difference between one file and another; correct?

8 A. Not if the MD-5 hash is matched. There shouldn't be.

9 Q. Right, but just using the comparison we have drive A and
10 drive B; right?

11 A. Yes.

12 Q. They can, the two separate drives, they can have one or
13 more or none of the same files; right?

14 A. Oh, absolutely. I misunderstood you, but if the two
15 drives that you're talking about drive A has an MD-5 has of
16 123 as an example and drive B has a hash of 123, all of the
17 files on drive A should be identical to all the files on
18 drive B. If they're not, they should have completely
19 different MD-5 hash values.

20 Q. Understood. The computer, the searches that you're
21 talking about, they cannot tell you who put the information
22 on the computer; correct?

23 A. That is correct.

24 Q. Whether it was put on through a Trojan horse or spyware,
25 you would not be able to tell that from your type of

1 examination?

2 A. Despite performing a search, no, I would not. That
3 would require additional analysis.

4 Q. Let me ask you a question. What type of materials would
5 be picked up when you make a complete copy of another hard
6 drive? Would you pick up documents that are saved?

7 A. You make an exact copy of the contents of a hard drive,
8 we're talking about a hard drive in this particular example
9 everything should be picked up. Incapped files, deleted
10 files, remnants of deleted files that are in what we refer to
11 as unallocated space.

12 That's a way of saying the unused portion of the
13 hard drive. Maybe there was a file saved in a particular
14 portion of the hard drive at one point. It has since been
15 deleted, but the information that the file contains could
16 still be present. That should be picked up --

17 Q. Let me stop you right there. That's a lot of
18 information.

19 A. I'm sorry.

20 Q. Let me go back for just a minuted to unallocated space.
21 When we save something on a computer, obviously, that's
22 something that we can retrieve right away unless it's
23 encrypted; right?

24 A. You can still recover it. It's just it would remain
25 encrypted thus what the file actually is would be not

1 readable.

2 Q. But if we delete something on our computer, it goes into
3 unallocated space unless it's written over; correct?

4 A. For the most part, yes, sir.

5 Q. All right. So you would pick up documents that are
6 saved, fragments of documents that are in unallocated space
7 and have not been written over; correct?

8 A. Yes, that is correct.

9 Q. And by documents we mean not just like Word or Word
10 Perfect documents, we mean emails that are saved, PDFs,
11 Internet chats, things like that.

12 A. Right. Internet browsing history, pictures, remnants of
13 pictures. You name it. Text strings.

14 Q. So if you ran a search for Windows or Lakers or whatever
15 it may be, you would pick up not only documents that were
16 purposefully saved, but documents that were deleted but are
17 still in unallocated space.

18 A. Correct.

19 Q. Just one question on the Cellebrite and the loose media
20 kiosks. On those devices you can compare actual files;
21 correct?

22 A. If you have the original source media, for example, a
23 thumb drive and the case agent uses the loose media kiosk to
24 copy out some files from that thumb drive, we will now have
25 some MD-5 hashes associated with those files. If we have the

1 original source thumb drive independent of that, we can look
2 at that thumb drive get -- make MD-5 hash files, calculate
3 MD-5 hash values of the individual files on that thumb drive
4 to do a comparison, yes.

5 Q. You also talked about doing a file-by-file comparison.
6 I think you said it's possible to do a visual inspection?

7 A. Correct.

8 Q. And that's a fancy way of saying looking at the source
9 file and the copy file?

10 A. It's just eyeballing it if you will. What we're doing
11 is attempting to make sure that if a picture file was copied
12 over, we see what the picture file is. If we now have the CD
13 that we made the copy to and we put it in another machine,
14 look at that, does that represent the picture file that was
15 on the thumb drive. So it's not a scientific method by any
16 means. It's a just a quick visual verification.

17 Q. In this case when the index searches were done, did you
18 pick the search terms or did someone else pick the search
19 terms?

20 A. The case agent did.

21 Q. Were you even involved in that process at all?

22 A. No, I was not.

23 MR. AARON: Thank you. Nothing further.

24 THE COURT: Thank you. Mr. Thomas.

25 MR. THOMAS: Yes, Your Honor.

1 CROSS-EXAMINATION

2 BY MR. THOMAS:

3 Q. Good afternoon, Investigator Goldsmith.

4 A. Good afternoon.

5 Q. If I'm a computer user and I go to a website like
6 cnn.com, that website contains pictures of things. Those
7 pictures are written to my hard drive; correct?

8 A. Under most circumstances, yes.

9 Q. I don't have to right click on a picture and hit save as
10 in order for it to get to my computer. Just as soon as it
11 hits my screen, it's written somewhere on my hard drive.

12 A. That is accurate, yes.

13 Q. If you're using the Internet Explorer in a folder called
14 temporary Internet files?

15 A. Yes, that is accurate.

16 Q. So just by going to a newspaper website, I'm
17 automatically downloading every image from that website into
18 my computer.

19 A. For the most part, yes, that is correct.

20 Q. And even though all those images are in my computer, you
21 can't tell whether I the user actually read the article. You
22 just have pictures in my hard drive.23 A. We could show that a particular user of the computer
24 went to a particular website. We could show most likely the
25 contents of that website. As far as someone actually reading

1 the article on the website, no, absolutely not.

2 Q. Right. So if I go to a newspaper website and there's 20
3 articles, it might download 20 articles worth of pictures in
4 a fraction of a second and I have read none of them.

5 A. It would essentially give you the front page of the
6 article we're talking about. If there are any pictures
7 associated with that front page, yes, those pictures would be
8 downloaded automatically without any additional input by the
9 user. The text from that front page would be downloaded as
10 well. Basically, as a labor saving device on part of the
11 computer.

12 Q. Okay. So if I go to that cnn.com and all those images
13 go to my hard drive, and then someone seizes my computer and
14 runs a search like you did and extracts all the images,
15 you'll have all the images from my computer, but you can't
16 tell whether or not the user viewed the images or read the
17 articles?

18 A. Depending upon the location of where the pictures were
19 saved that is accurate. If for instance, we're talking about
20 Internet Explorer and pictures are found in the temporary
21 internet file folders of that computer, then that's done most
22 likely automatically by the user. Now, if those same
23 pictures are say found in a different place a downloads
24 folder found on the desk top, then it's open to
25 interpretation whether the user consciously downloaded that

1 particular picture or file.

2 Q. Right. So like if I go to a dog website and I right
3 click on a bunch of dog pictures and save them to a folder
4 called dogs, then that's what you're talking about. Then you
5 can make some inferences I actually viewed the pictures.

6 A. That is correct.

7 Q. But if all the files are found in temporary Internet
8 files, all I had to do was access the website and all the
9 pictures are there.

10 A. That is primarily the way it works, yes, sir.

11 Q. All right. Back in December of 2012, you did forensic
12 investigations of an iPod Nano and an iPad.

13 A. Yes.

14 Q. Do you know who the iPod Nano belonged to?

15 A. I do not.

16 Q. Do you know who the iPad belonged to?

17 A. I do not.

18 Q. And you extracted the images from both of those devices;
19 correct?

20 A. No.

21 Q. I believe you said on a Blu-Ray disk you put --
22 extracted images from both of those devices. Was I
23 incorrect?

24 A. If I said that, I misspoke.

25 Q. Okay.

1 A. What I extracted from the iPod at the request of the
2 case agent audio files. I believe 229 to be specific audio
3 files from the iPod Nano.

4 Q. Okay. So the iPod Nano you were just looking for audio.
5 You weren't looking for pictures or any other kind of file?

6 A. Right. The iPad was essentially the direction was we
7 want everything. So any content from the iPad that was
8 retrievable by the software that I was using was essentially
9 dumped to that disk, the Blu-Ray disk for review by the case
10 agent whether it be pictures, whether it be chat, text
11 messages, whether it be email, et cetera.

12 Q. Okay. Now, let's take the iPod Nano that you just
13 extracted the audio files for. You at the direction of the
14 case agent put all the audio files from that iPod Nano on a
15 Blu-Ray?

16 A. Correct.

17 Q. Did you observe any of the data or the metadata with the
18 song files such as whether they were listened to?

19 A. No. Well, any metadata that absolutely that was
20 preserved and should be in the report that accompanied the
21 file extraction. There are individual hash values, creation
22 times, there are path meaning where they were located on the
23 iPod Nano that should have been preserved. As far as whether
24 they were listened to or not that was not captured.

25 Q. So I could have an iPod with 5,000 songs. You would

1 have extracted all of that and put it on a Blu-Ray, but you
2 can't tell the jury, the Judge or anybody whether I listened
3 to the songs?

4 A. No, I could not.

5 Q. And if I listened to one song more than another song,
6 you couldn't tell us that either?

7 A. Not with the software that's being used, no.

8 Q. Now, with respect to the iPad, did you extract audio
9 filed and video files?

10 A. I would have to look at the results media myself to
11 refresh my memory. I do not recall that any audio or video
12 files were in fact extracted.

13 Q. If there were video files or image files extracted from
14 the iPad, they would have probably used a Safari browser or
15 maybe a Google, Chrome browser, some browser on the iPad;
16 correct to get those images?

17 A. Not for a video file or an audio file not necessarily.

18 Q. Well, if they got them from the Internet from the iPad,
19 the browser that comes on the iPad is Safari?

20 A. That is the native browser, yes, sir.

21 Q. And if you're a Google person, you can download from
22 Chrome.

23 A. Right.

24 Q. Can you download the Internet Explorer on an iPad?

25 A. Not the latest version, no.

1 Q. So there wouldn't be a temporary Internet files folder
2 on your iPad because you can't use Internet Explorer on your
3 iPad?

4 A. To the best of my knowledge, no.

5 Q. Is there a temporary Internet like folder for Safari and
6 for Google Chrome?

7 A. Yes.

8 Q. And the extraction or the analysis that you did of the
9 iPad, would it have captured where the image files were on
10 that iPad?

11 A. Yes, it would.

12 Q. All right. Are they in a report somewhere or are they
13 attached to the picture?

14 A. The report itself should give a listing of where a
15 picture or a video originated. We refer to it as the path
16 and that would give you an indication of how it originated on
17 that device. So unlike the temporary Internet files folder
18 for Internet Explorer, both Safari and Google Chrome use
19 something called a cache c-a-c-h-e and that's where that
20 information is stored. So if I find a file that's in a cache
21 folder, that's consistent a little bit being downloaded from
22 the Internet.

23 Q. And what if I have my privacy setting such that I have
24 either gone incognito on Google Chrome or I set it for erase
25 the cache on Safari, there would be no record of the path?

1 A. That is correct.

2 Q. Now, the Blu-Ray that you created with the images and
3 audio, perhaps video files from these devices, are they all
4 on the same Blu-Ray?

5 A. Yes, they are.

6 Q. Are they jumbled together or does it show what came from
7 the iPod and what came the iPad?

8 A. They're differentiated by device so this stuff came from
9 the iPad. This stuff came from the iPod.

10 Q. But what's not on the Blu-Ray is the path name for the
11 file structure where the image or audio file was found?

12 A. I would have to review the Blu-Ray disk which I have not
13 done so to give you a definitive answer about that.

14 Q. All right. Well, assuming just for argument's sake that
15 the Blu-Ray just contains an iPod folder and an iPad folder
16 with images and files in it. Okay. If I open an image from
17 one of those two files, just by looking at the image can you
18 tell where it is imputed from?

19 A. No, I cannot.

20 Q. All right. And you can't tell when the image was
21 imputed?

22 A. There should be what's referred to as a last access date
23 and a last written date, as well as a creation date.

24 Assuming the date time settings on the device being viewed
25 are accurate, that would give at least an initial indication

1 of when that file was created or last accessed on that
2 device.

3 Q. Would that be on the image itself or that would be in a
4 separate report that's not on a Blu-Ray disk?

5 A. That should be on the Blu-Ray disk, but again that
6 depends on which software was used to create report. For the
7 iPod I believe that Decay was used to create the report.
8 That information should be on the FTK report. For the iPad a
9 different piece of software was used. I do not believe that
10 information is captured using that different piece of
11 software.

12 Q. All right. So if there's a song or a lecture or a
13 Podcast for some type of speaking image or speaking file on
14 the Blu-Ray, you can't tell the jury or anyone in here
15 whether someone listened to it.

16 A. No, I cannot.

17 Q. And if they listened to it a bunch of times, you
18 couldn't tell us that either?

19 MR. CHIU: Objection, Your Honor. Asked and
20 answered.

21 THE COURT: Sustained.

22 BY MR. THOMAS:

23 Q. With respect to the video files or the image files, you
24 may be able to show when it was last opened, but you can't
25 tell us how many times it was opened?

1 MR. CHIU: Objection, Your Honor. Asked and
2 answered.

3 THE COURT: Sustained.

4 MR. THOMAS: I'm almost positive I never asked that
5 question.

6 THE COURT: All right. You may answer.

7 THE WITNESS: I'm sorry. Can you repeat the
8 question?

9 MR. THOMAS: Yes.

10 Q. I believe you said there's certain information captured
11 such as last time that it was accessed. But is there any
12 information captured to say how many times someone looked at
13 a particular image or viewed a particular video file?

14 A. For those particular devices using the software at the
15 time, the answer is no.

16 MR. THOMAS: Just one moment. I have nothing
17 further.

18 THE COURT: Redirect.

19 MR. CHIU: Your Honor, before I ask a few
20 questions, I have my next witness who I would like to take
21 out of order because it was her day off today and I would
22 like to see if we could -- she is a short witness. Would it
23 be okay to put her on after this?

24 THE COURT: What do you mean?

25 MR. CHIU: After Mr. Goldsmith and it will be

1 short.

2 THE COURT: Yes, all right.

3 REDIRECT EXAMINATION

4 BY MR. CHIU:

5 Q. Investigator Goldsmith, how many computers have you
6 looked at?

7 A. Over 500.

8 Q. How many have you examined?

9 A. Over 500.

10 Q. How many pieces of digital media have you examined?

11 A. It's more than 1,000.

12 Q. What was the number that you gave me or you stated that
13 if you compare one file with an MD-5 hash digital fingerprint
14 with the original media with that MD-5 hash, what was the
15 number that you gave?

16 A. As far as them having the same MD-5 hash value if in
17 fact they're different files?

18 Q. Right. What was that number?

19 A. 340 billion, billion, billion, billion to one against
20 such a random occurrence.

21 Q. Investigator Goldsmith, you were asked questions about
22 looking at someone's temporary Internet history.

23 A. Correct.

24 Q. And that if you just browse, you can see images that
25 were collected by going to the website; right?

1 A. The way that a web browser works if it's at its default
2 settings, if one person goes to cnn.com, automatically,
3 pictures from that website, the text from that website is
4 downloaded automatically by the web browser without any
5 further interaction by the user. Now, the user by changing
6 the default settings can prevent that from happening, but
7 that's the default.

8 Q. If you were able to look at somebody's temporary
9 Internet history, can you see certain browsing patterns?

10 A. Yes.

11 Q. And if you saw an image that came up over and over and
12 over and over again, would that indicate anything about how
13 many times somebody visited a website?

14 A. To further answer that question, you do not have to look
15 at the files that are being saved to the computer.

16 Independent of files being downloaded to the computer when
17 someone goes to the website, browsers retain what's called a
18 web browsing history. It's essentially a database of
19 websites that the user has visited that has nothing to do
20 with files being downloaded to the computer.

21 For instance if I go to Google.com and I've gone
22 through 50 times, that number will be recorded in the web
23 browsing history of the computer unless I as the user do
24 something to delete that number or reset that number, that's
25 the default setting. Now, after a certain number of days

1 depending upon what web browser one is using, that is
2 essentially emptied out.

3 So one can track how many times one has gone to a
4 particular website by looking at the web browsing history and
5 that is completely independent of what's found in the
6 temporary Internet file folders. So yes, tracking of
7 someone's web browsing history through the web browser is
8 highly possible.

9 MR. CHIU: No further questions for this witness,
10 Your Honor.

11 THE COURT: Thank you. You may step down.

12 All right. Your next witness.

13 MR. CHIU: Your Honor, the United States calls
14 Ms. Patrice Edwards.

15 THE CLERK: Please raise your right hand.

16 (Witness sworn.)

17 THE CLERK: Thank you. You may be seated. Please
18 state your full name and spell it for the record.

19 THE WITNESS: Patrice Renee Edwards. P-a-t-r-i-c-e
20 R-e-n-e-e E-d-w-a-r-d-s.

21 THE COURT: Thank you. You may inquire.

22 DIRECT EXAMINATION

23 BY MR. CHIU:

24 Q. Ms. Edwards, who are you employed by?

25 A. Um, the Department of State.

1 Q. What do you do for a living?

2 A. I'm a passport specialist.

3 Q. Where do you work?

4 A. The Los Angeles Passport Agency.

5 Q. And where is the Los Angeles Passport Agency?

6 A. It's in the federal building located off of Wilshire and
7 Veteran.

8 Q. How long have you been a passport processor?

9 A. About seven years.

10 Q. Do you like what you do?

11 A. I do. It's interesting.

12 Q. Do you meet different kind of people?

13 A. Yes.

14 Q. They're all going somewhere?

15 A. Yes.

16 Q. Can you briefly describe your training and experience as
17 a passport processor?

18 A. Yes. I issue passports and I review the application and
19 the citizenship evidence and the ID to make sure everything
20 is consistent.

21 Q. Now, are there different ways to get a passport?

22 A. There are.

23 Q. And I'm sorry, just to be clear, this is to get a U.S.
24 passport; right?

25 A. That is correct.

1 Q. And are there different ways to get a U.S. passport?

2 A. Yes.

3 Q. And what are the different ways to get a passport?

4 A. You can get an expedited passport, which is at my agency
5 or you can get a routine passport which is done at the Post
6 Office acceptance facilities.

7 Q. So focusing just on your agency, what type of passports
8 does your agency at the federal building give out?

9 A. We give out U.S. passports and we have an expedited
10 service.

11 Q. Is there way to get a regular passport meaning
12 non-expedited from your office?

13 A. No.

14 Q. So a customer wanting a U.S. passport in a regular
15 amount of time wouldn't go through your office; correct?

16 A. One more time.

17 Q. Is it possible to get a standard business waiting time
18 passport through applying at the federal office?

19 A. Expedite, yes, but routine, no.

20 Q. And expedited how many days would it take to get an
21 expedited passport?

22 A. In our office three business days.

23 Q. And what's the fastest somebody could get a passport if
24 they wanted to?

25 A. You can get it the same day depending on your travel.

1 Q. How much does it cost to get an expedited passport?

2 A. The total for an adult is 195.

3 Q. Can you describe generally how the inside of the
4 passport office is laid out?

5 A. It's a big lobby area and we have a check-in window, and
6 there is about 17 windows where we accept the passport
7 applications.

8 Q. And where do you sit?

9 A. I can sit at any seat that's available at the time.

10 Q. Do you have a favorite window?

11 A. I do.

12 Q. What favorite window is that?

13 A. 16.

14 Q. Were you working on November 13, 2012?

15 A. Yes.

16 Q. At some point did you encounter two men who came and
17 applied for a passport?

18 A. Yes.

19 Q. Can you describe those two men?

20 A. Um, one man was Vietnamese and the other one was
21 Hispanic.

22 Q. And what happened when you encountered these men?

23 A. I took the passport application and I reviewed the
24 evidence, the birth certificate and the ID to make sure it
25 was consistent. I asked the applicant what was the purpose

1 of his travel. He told me he was seeing his grandfather and
2 he was going to Mexico to see a cousin.

3 Q. Did he tell you anything about his grandfather?

4 A. He said he was sick, he was ill.

5 Q. Who was telling you this?

6 A. This was the applicant.

7 Q. And just to be clear how many men did you say you saw?

8 A. Two.

9 Q. And so what happened after -- and was this at the window
10 where you work?

11 A. Yes.

12 Q. And at some point was there an application submitted for
13 a passport?

14 A. Yes.

15 Q. Did you receive that application?

16 A. Yes.

17 Q. Did you review the contents of that application?

18 A. Yes.

19 Q. Did you accept money for payment for the passport
20 application?

21 A. Yes.

22 Q. Now, you should have in front of you a few exhibits in
23 blue. Can you first take a look at Exhibit 172 and when
24 you're ready look up at me. Do you recognize this
25 photograph?

1 A. Yes.

2 Q. And where is this -- what is this photograph depict?
3 Where does it depict?

4 A. This is in our lobby near the check-in window area.

5 Q. And are you familiar with this -- with where this
6 photograph is taken?

7 A. Yes.

8 Q. And is there anybody inside the photograph?

9 A. Yes. I see the two gentlemen that I had at my window
10 and I see my co-workers on the other side of the window.

11 Q. And are these the two men you encountered on
12 November 13, 2012?

13 A. The Vietnamese guy here and the Hispanic guy there.

14 Q. Yes. Does that accurately depict who you saw at the
15 window?

16 A. Yes.

17 MR. CHIU: Your Honor, at this time the government
18 would move into evidence Exhibit 172.

19 THE COURT: Any objection to 172?

20 MS. VIRAMONTES: No, Your Honor.

21 MR. THOMAS: No objection.

22 THE COURT: All right. 172 is ordered admitted you
23 may publish.

24 (Exhibit 172 was admitted.)

25 BY MR. CHIU:

1 Q. And just to be clear, you indicated there were two men
2 and one man who you dealt with at the window applying for the
3 passport; correct?

4 A. Yes.

5 Q. And if you could identify an article of clothing of the
6 man who was applying for the passport.

7 A. An article of clothing?

8 Q. In the photograph. I'm sorry. Is it -- which person
9 was it that applied for the passport?

10 A. I'm sorry. The one with the black shirt and the gray
11 vest, looking vest, yes.

12 Q. If you look directly at the photo, it would be the
13 person on the right; correct?

14 A. Yes.

15 Q. And is that the person who you identified previously as
16 the Vietnamese individual?

17 A. Yes.

18 Q. And if you could zoom in and is that the person on the
19 left, is the person on the left the person you saw along with
20 the person who applied for the passport?

21 A. Yes.

22 Q. Was there anybody else with these two men?

23 A. No.

24 Q. Now, at some point you accepted an application for
25 passport correct?

1 A. Yes.

2 Q. I'm going to have you look at what's been marked for
3 Government's Exhibit 172, 173 A, 173 B and 174 as well. When
4 you're done, look up at me.

5 Ms. Edwards, are these the documents you received
6 from the individual who applied for the passport that day?

7 A. Yes.

8 Q. And how do you know that you had received these
9 materials?

10 A. How do I know? It was given to me at the window.

11 Q. Is there some indication that you personally reviewed
12 these documents?

13 A. I do.

14 Q. Just to be clear, you received 172 and 173 A and B;
15 correct?

16 A. Yes.

17 Q. And you recall receiving these at the window?

18 A. Yes.

19 MR. CHIU: Your Honor, the government would move
20 Exhibit 172, 173A, 173B into evidence at this time.

21 THE COURT: Any objection to any of those?

22 MS. VIRAMONTES: No, Your Honor.

23 MR. THOMAS: No, Your Honor.

24 THE COURT: They're ordered admitted and you may
25 publish.

1 (Exhibits 172, 173, 173A and 173B were admitted.)

2 MR. CHIU: Your Honor, just to be clear that's 172,
3 173, 173A and 173B.

4 THE COURT: All right.

5 MR. CHIU: Thank you, Your Honor.

6 Q. Ms. Edwards, is this the application you received?

7 A. Yes.

8 Q. I'm gonna direct your attention to the lower part of the
9 screen here where I'm circling. Is that a stamp of your
10 name?

11 A. Yes.

12 Q. Does that indicate you received this application?

13 A. Yes, I received it and executed it, yes.

14 Q. What's the date of that application?

15 A. November 13, 2012.

16 Q. And if I could just focus on this, what's the last name
17 of the individual for the person who applied for the
18 passport?

19 A. Gojali.

20 Q. Now, I'm gonna direct your attention to the next page.
21 If we can focus on the middle here where it says travel
22 plans, at the time when you take this application in, do you
23 ask the individual why they're traveling?

24 A. Yes.

25 Q. And do you recall the story that was given to you by

1 this individual who applied for the passport?

2 A. Yes.

3 Q. And what was that story?

4 A. I remember him saying he was gonna go see his sick
5 grandfather and he said while he was in Mexico, he was gonna
6 go visit a cousin that I remember.

7 Q. And does it indicate on the travel plans and part of the
8 application that says countries to be visited Mexico UAE?

9 A. Uh-huh.

10 Q. And the date of departure, what's the date of departure?

11 A. Looks like November 16, 2012.

12 Q. And these if we zoom out a little bit and you look at
13 some handwriting, whose handwriting is that?

14 A. That's mine.

15 Q. And that indicates that you input this information on to
16 the application; correct?

17 A. Yes.

18 Q. In connection with this application, were you provided
19 with some travel documents?

20 A. Yes.

21 Q. I'm gonna direct your attention to 173-B.1. In
22 connection with the application, were you provided with an
23 itinerary of plans for departure?

24 A. Yes.

25 Q. And oftentimes in your experience when people are

1 applying for a passport do they submit an itinerary to back
2 up or to validate their travel plans?

3 A. Yes.

4 Q. And is that what happened here?

5 A. Yes.

6 Q. Did you make a copy of the itinerary in support of the
7 passport application?

8 A. I did.

9 Q. And if you could read what, I know it's hard to see, but
10 if you can read what the destination departure city is, could
11 you read it for the members of the jury?

12 A. Mexico City.

13 Q. And if you could read the final inbound destination,
14 could you read that to members of the jury?

15 A. I see Dubai that's what I see.

16 Q. Again, this was provided to you at the Los Angeles
17 Passport Agency when you were working that day; correct?

18 A. Yes.

19 MR. CHIU: Your Honor, I don't recall whether I
20 moved 174 in.

21 THE COURT: I don't think so.

22 BY MR. CHIU:

23 Q. Ms. Edwards, can you please take a look at Exhibit 174.
24 Ms. Edwards, who was it that paid for the passport?

25 A. I remember the Hispanic guy helped pay for the passport.

1 Q. So the person who applied for the passport was that the
2 person who paid for the passport?

3 A. The person who applied?

4 Q. The person you identified as the Vietnamese individual.

5 A. Well, cause I was given a cash payment and a credit card
6 payment and I remember receiving a credit card payment from
7 the Hispanic guy. I can't remember who gave me the cash,
8 though, but I do remember taking cash from them as well.

9 Q. And taking a look at Government's Exhibit 174, does that
10 appear to be the receipt that you gave to the individuals?

11 A. Yes.

12 MR. CHIU: Your Honor, at this time the government
13 will move Exhibit 174 in.

14 THE COURT: Any objections to 174?

15 MS. VIRAMONTES: No, Your Honor.

16 MR. THOMAS: No, Your Honor.

17 THE COURT: Ordered admitted. You may publish.

18 (Exhibit 174 was admitted.)

19 MR. CHIU: Thank you, Your Honor.

20 Q. If we can zoom in on the left-hand corner, the first
21 receipt to the left. Are you able to make out what the
22 signature of that is?

23 A. Not really, no.

24 Q. Can you make out the first letter?

25 A. Looks like an R.

1 Q. Any other letters you can make out?

2 A. Looks like I see an L in there, a P.

3 Q. Anything else?

4 A. In the signature an A, that's about it.

5 Q. And is this the -- looking at the right side of the same
6 exhibit, you recall receiving some cash as well from one of
7 the men; correct?

8 A. Yes.

9 Q. But you don't recall specifically who you received the
10 cash from; right?

11 A. No.

12 Q. Ms. Edwards, directing your attention to Government's
13 Exhibit 191 in front of you. Do you have that which has
14 already been admitted as a business record?

15 A. Okay.

16 Q. Do you have that in front of you?

17 A. Yes.

18 Q. What does that document appear to be?

19 A. It looks like a bank statement.

20 Q. Are you able to determine who the bank statement is for
21 by flipping through the pages?

22 A. I see customer name Ralph K. DeLeon.

23 Q. I'd like you to turn now to the last second to last
24 statement November 10, 2012 to December 11, 2012. It's near
25 the back if you can take a quick look at it.

1 A. Okay.

2 Q. One page before that. If you look at the name on the
3 left-hand corner to who this statement is addressed to just
4 read the name?

5 A. Ralph K. DeLeon.

6 Q. Turn to the next page after that. Can you look at an
7 entry on November 14, 2012?

8 A. Yes.

9 MS. VIRAMONTES: Objection, Your Honor. Relevance.

10 MR. CHIU: Your Honor, this is relevant to show
11 that Mr. DeLeon paid for the passport.

12 THE COURT: Overruled.

13 BY MR. CHIU:

14 Q. Directing your attention to November 14, 2012, do you
15 see an entry there that says check card purchase 11-13?

16 A. Yes.

17 Q. Are you able to see that on the screen in front of you?

18 A. Yes.

19 Q. Now, was there, in looking at these records, was there a
20 cash debit for \$95 on 11-13, November 13th, the same day that
21 you received an application?

22 A. Yes.

23 Q. And what's the remaining balance on that day?

24 A. \$100.

25 Q. I'm sorry. Next to the 95 is there a balance?

1 A. Oh, I'm sorry. Oh, yeah, \$5,860.19.

2 MR. CHIU: I have no further questions, Your Honor.

3 THE COURT: Ms. Viramontes, cross-examination.

4 CROSS-EXAMINATION

5 BY MS. VIRAMONTES:

6 Q. Good afternoon, Ms. Edwards.

7 A. Good afternoon.

8 Q. You testified that they paid for the passport in cash
9 and with a credit card.

10 A. Yes.

11 Q. And they just put up a bank statement of Mr. DeLeon's;
12 correct?

13 A. Uh-huh.

14 Q. You don't normally look at Mr. DeLeon's bank statements,
15 do you?

16 A. No.

17 Q. And you don't know if the money he withdrew was the
18 money used to pay for passport; correct?

19 A. It was his credit card.

20 Q. I'm talking about the cash.

21 A. Oh, I'm sorry. That I don't know, no.

22 MS. VIRAMONTES: No further questions.

23 THE COURT: Thank you.

24 Mr. Thomas?

25 MR. THOMAS: I have nothing.

1 THE COURT: Any redirect?

2 MR. CHIU: One moment, Your Honor.

3 I have no further questions, Your Honor.

4 THE COURT: All right. Thank you. You may step
5 down. You're excused.

6 All right. Ladies and gentlemen, thank you for
7 your patience and attention this week. Remember we don't
8 need you here on Monday so we'll see you back on Tuesday no
9 later than 9:00. Remember over the next three days don't
10 discuss the case, anything about the case, anything about the
11 testimony, the witnesses, lawyers, participants in the trial
12 or anyone connected to the case. Don't do any research,
13 don't Google, don't tweet. Don't do any research in any
14 fashion about anyone. Don't make up your minds about the
15 case or any issue in the case or what your verdict should be
16 or anything else. We'll see you back on Tuesday at
17 9 o'clock.

18 (Jury not present.)

19 THE COURT: On the record outside the presence of
20 the members of the jury. I had a couple of small
21 observations or suggestions. First of all, I think it does
22 help to have the notebooks for the witnesses. Just to save
23 some expense and trouble, I don't need a notebook unless you
24 have a lot of exhibits for a particular witness. It's fine
25 to give it to me in a manila folder to save the expense of

1 the notebook. And probably the same thing applies to a
2 witness. If you've just got one or two exhibits or just a
3 few for a witness, you can put them in a manila folder. If
4 you've got several, I think a notebook is helpful so nothing
5 gets lost.

6 I really don't want to try to micromanage the way
7 anybody tries their case, but it seems to me we would have
8 saved a considerable amount of time the last couple of days,
9 at least an hour or so, if there had been some conferring
10 among counsel about what exhibits could be stipulated to
11 because the amount of time we waste when there's a lot of
12 exhibits that you may -- I know you think that you have to
13 wait until the foundation is laid by the witness testifying
14 on the stand, but we spent a whole lot of time on really
15 noncontroversial exhibits today going one-by-one and then,
16 you know, everybody standing up and saying no objection. So
17 we could save a lot of time I think if by Tuesday you could
18 come up with a list that there really is no objection to and
19 we could pre-admit those.

20 In the alternative let me suggest at this point it
21 would be government counsel, although the same thing would
22 apply in the defense case, if you move in groups at a time.
23 I mean you did that a little bit today near the end, but if
24 you know want to move 4, 5, 10 exhibits at a time and then
25 publish them that would speed things along. What would

1 really speed things along as to a lot of the exhibits if they
2 could be pre-admitted so please give that some consideration.

3 MR. THOMAS: On that issue if we got a list of
4 exhibits for each one of the witnesses they're planning to
5 call, we could probably tell them ahead of time that we don't
6 object to any of them.

7 THE COURT: So let's see if you can work something
8 like that out. Back to the videos and the motion to strike
9 the videos. The Federal Rule of Evidence at issue is it's
10 901 B(1) not 902. And I read the case that was cited the
11 Stearns case. There's also a more recent case, although it
12 is an unpublished case from this circuit United States versus
13 Payton P-a-y-t-o-n 92 F3d 1195 which is a 1996 case so that
14 was before unpublished cases could even be cited. But it
15 relies upon Stearns and holds that the, you know, along with
16 the Stearns that the authentication requirement is satisfied
17 by evidence sufficient to support a finding that the matter
18 in question is what its proponent claims.

19 And in that case what's strikingly similar to our
20 case is that the videotapes that were introduced at trial
21 were made by an undercover informant just like the tape at
22 issue here. The informant in that case was unavailable to
23 testify at trial because he had died in the meantime, but the
24 trial court having admitted the tape was, the videotapes was
25 upheld on appeal on the basis of the holding that the court

1 could find foundation by looking to external and internal
2 circumstantial evidence of authenticity.

3 And so I think that's what we have here and, of
4 course, that's to a certain extent, although it's photographs
5 that's involved, that is what the Stearns case holds as well.
6 We have the direct evidence in the form of the testimony by
7 the witness Mr. Avery Nelson, the first witness this morning
8 because he was present during the events that are pictured at
9 the beginning and the end.

10 And then I think that the circumstantial or
11 external evidence is that the testimony and the evidence by
12 viewing the videotapes and the stills produced from it that
13 the persons pictured on it were wearing the same clothing,
14 they were firing the same weapons that he testified to and
15 that are shown -- not that it would be what he testified to
16 and I think that's sufficient. So I'm inclined to deny the
17 request to strike. You may argue, Mr. Larsen.

18 MR. LARSEN: Thank you, Your Honor.

19 I think Your Honor was correct earlier today when
20 you were inclined to grant our motion because here we have a
21 situation where the witness first told the jury that these
22 videos were true and correct depictions of what happened. He
23 then admitted on cross-examination that he hadn't actually
24 witnessed all of what was happening.

25 He, I think we agreed that he knew they came in,

1 they gave their IDs and even when they left, they checked out
2 and he gave them back their IDs so the stills depicting that
3 we have no problem with. But we do have a problem with the
4 videos showing the guns being fired because he said he never
5 witnessed it. He has no knowledge. He has no basis to tell
6 the jury that this was a true and accurate depiction of what
7 happened. And for the reasons Your Honor articulated earlier
8 today, I think our motion should be granted.

9 THE COURT: All right. Was it Mr. Grigg?

10 MR. GRIGG: Yes, Your Honor.

11 Your Honor, as the court in Stearns in an opinion
12 written by then Circuit Judge Kennedy now Supreme Court
13 Justice Kennedy indicated the circumstantial evidence and the
14 external evidence as the Court stated, however, earlier this
15 morning and I didn't mean to do this when I was arguing about
16 the testimony that directly corroborates the depictions in
17 the videos, I neglected to also mention that Mr. Avery
18 testified that he directed Mr. DeLeon and Mr. Santana and the
19 CHS to use lane three.

20 And as the videos internally show, just like they
21 show that the subjects were wearing the same clothing and so
22 on, they are directed in their firing in the exact same lane,
23 lane three and that's evident from the videos for each of the
24 individuals firing both the AR-15 and the handgun. And
25 that's one additional factor of the internally consistent and

1 corroborative evidence aside from the Dodger hats, the
2 clothing, the actual firearms.

3 I might have taken quite a long time and I
4 recognize doing that in having him describe the layout of the
5 firing range, but, of course, the layout of the firing range
6 is exactly accurate to his description and they ended up
7 going to the exact same lane he directed them to and he
8 received the weapons back before they left.

9 THE COURT: I mean inconsistency is exactly the
10 right word. The problem here is not so much the videos.
11 It's the testimony that was given when the government was
12 laying the foundation that I think was misleading which was
13 to the effect that -- and I'm not saying it was intentionally
14 misleading. I'm just saying it was misleading because he
15 testified as Mr. Larsen pointed out that he had reviewed the
16 video and it was a true and accurate depiction.

17 That's not correct because he wasn't there for all
18 of the time that the three persons shown on the video were at
19 the firing range. So that's I think what I found difficult
20 when I was first facing this question and thinking about
21 whether to grant the motion to strike. And that may have
22 remained a problem, you know, as to the credibility of the
23 witness, I'm sure, well, I suspect the defense will argue
24 that in closing. But under the case law, I do think that
25 piece of testimony does not affect ultimately the

1 admissibility of the video.

2 Mr. Thomas, did you wish to be heard?

3 MR. THOMAS: I did, Your Honor. There's one thing
4 that my colleague neglected to mention. It came out in my
5 cross-exam that the witness only saw the video for the first
6 time today. It wasn't something that he saw a year ago and
7 went through his closed camera circuit TV and then made sure
8 it verified what we saw in the store. He just saw it today.
9 So he really -- and it was two years ago when this happened.
10 So for him to be able -- he's just simply not in a position
11 to say whether it's accurate depiction because he had never
12 seen it before today and he never matched it up to the closed
13 circuit TV and he wasn't watching it all. He was attending
14 to other people in the store and he saw them at the beginning
15 and at the end and not during the middle.

16 You know quite frankly I don't understand why the
17 government, you know, the government's just going to call the
18 CI. They can just authenticate it through the CI. I don't
19 understand -- I think the Court should hold it in abeyance
20 and wait until the end of the government's case to move it
21 and by then the CI will have testified and we could have laid
22 it through him.

23 THE COURT: All right. Mr. Grigg.

24 MR. GRIGG: Your Honor, there is no cause or any
25 reason to hold any decision in abeyance. The circumstantial

1 evidence and the internal and external corroborating evidence
2 meets the standard which is sufficient to allow a reasonable
3 juror to infer the item is what it purports to be and that
4 standard has been met.

5 Now, whether or not this individual compared it to
6 other video that he also did not take is not required and
7 it's of no moment for the purpose of analyzing the
8 foundation. Whether he took the video is also irrelevant and
9 in the Stearns matter, there was this random, random is my
10 word, but there's this photograph of a ship that had some
11 indicia of some pieces that were similar to the same ship as
12 it existed at a different point in time.

13 And it was located near a particular boat and had
14 certain rigging and so on. Even though there was no
15 corroboration for it, any other aspect of the photograph of
16 the ship, I think the description in the opinion was that the
17 shoreline was not identifiable. It was in the middle of the
18 water and so on and that's still sufficient. And that's
19 arguably we could have one or both of the participants who
20 are available to us to come in and say this is me, I was
21 here, that's me at the firing range or that's me watching the
22 people at the firing range, but none of those things are
23 required and we've met standard for admissibility.

24 THE COURT: All right.

25 MR. LARSEN: Your Honor, on that point just first

1 as to the Payton decision Your Honor mentioned and I haven't
2 had the opportunity to look it up. Your Honor mentioned it
3 was unpublished. There is a circuit rule in the 9th Circuit
4 saying unpublished decisions prior to January 2007 are not
5 citable.

6 Stearns I did look at the during the lunch break I
7 think is very distinguishable. There was critical question
8 in Stearns and that was whether the boats at issue were
9 photographed going to or returning from the harbor in
10 question. That was only thing that was disputed and there
11 photographs were entered in which a very distinctive red
12 netting which had originally been on one boat had been
13 transferred to the other boat and therefore that established
14 the fact that the photographs were taken when the boats were
15 on their return voyage as opposed to going to the island.

16 Here we're not dealing with the very specific
17 question of when. We're dealing with arguably very
18 inflammatory material picturing one of the defendants firing
19 an assault rifle. And a number of videos were played to the
20 jury today each one about a minute long. And it's not a
21 matter of a photograph depicting where a boat is. It's a
22 matter of a video depicting to the jury individuals firing
23 machine guns, and the witness who was called to authenticate
24 this to the jury admitted on cross-examination that the video
25 he told them was accurate and the events that he said were

1 accurately depicted he had never witnessed himself.

2 THE COURT: Well, some of them he had.

3 MR. LARSEN: He had witnessed them coming in and
4 leaving.

5 THE COURT: Well, more than that. Not that he just
6 witnessed them walking into the business and leaving the
7 business. He witnessed them signing the documents. He
8 explained things so I think you're understating.

9 MR. LARSEN: Fair enough, but I think the material
10 that prompted this objection is the material depicting the
11 defendants firing assault rifles, and the witness admitted
12 that he had not personally observed all of the actions that
13 he was telling the jury were in fact --

14 THE COURT: But the distinction is important
15 because he had the opportunity to see the two persons
16 pictured for long enough to give a description of what they
17 were wearing and so forth which is enough to create enough
18 evidence for a reasonable jury to draw an inference that the
19 video is accurate, which is the amount of time that he had to
20 observe them makes a difference.

21 MR. LARSEN: I would say they could draw an
22 inference as to identity, but not as to activity. Right?
23 Imagine two people come into a bowling alley and they check
24 in and the guy says go to lane 20 and go have your bowling
25 game. They bowl for two hours and secretly the videotape of

1 this is taken. And then guy who checks them at the alley
2 says everything in that video is accurate, but then admits he
3 hadn't actually watched it.

4 THE COURT: Yes, but as I said, that's a separate
5 issue from whether the video is admissible under the
6 authorities even if we overlook the unpublished decision, the
7 commentaries and authorities from other circuits whether or
8 not that goes to his, what you may argue about his
9 credibility, but there is other circumstantial evidence that
10 I think goes to the admissibility of the video.

11 MR. LARSEN: In Stearns the items admitted were
12 still photographs offered to prove one specific disputed
13 point. Here we have moving pictures a number of which were
14 shown to the jury at length depicting activities of one or
15 more of the defendants. I think on that point, there is no
16 authority. Moreover Stearns may sanction or may permit a
17 court to admit that evidence and 9th Circuit will say it's
18 not error when reviewing for abuse of discretion, but I think
19 Stearns certainly doesn't say that Your Honor has to admit
20 that evidence. I think Your Honor's inclination this morning
21 to exclude it was the correct one.

22 THE COURT: All right. What's the line-up of
23 witnesses for next week?

24 MR. CHIU: Your Honor, the government didn't get to
25 call two of its witnesses today so we'll be calling those two

1 witnesses Nguyen, Garcia -- excuse me. Three. Nguyen,
2 Garcia, Rivera and we have Bowens, Mueller and Spoda.

3 MR. AARON: Your Honor, do we have from the
4 government any greater or more accurate estimate of when
5 Mr. Santana and Mr. Gojali might testify? I bring that up
6 because we're not making much headway or not making much
7 headway yet with the 220 some calls from Mr. Santana and 70
8 plus I think from Mr. Gojali.

9 MR. GRIGG: Although I'm not claiming Mr. Gojali
10 for purposes of this proceeding, the government can work as
11 hard as possible to delay calling Mr. Gojali until sometime
12 after next week. So it would be the third week of trial.

13 THE COURT: All right. And what about Mr. Santana?

14 MR. GRIGG: Same.

15 THE COURT: So not next week.

16 MR. AARON: Thank you very much. I'm kind of
17 puzzled. I didn't understand Mr. Grigg's comment that he's
18 not claiming Mr. Gojali.

19 THE COURT: Meaning one of the other people on your
20 team might do the direct.

21 MR. GRIGG: Yes, Your Honor.

22 MR. AARON: I'm sorry. I thought they wanted to
23 remove him from their witness list because we could shorten
24 this proceeding.

25 THE COURT: Anything else?

1 MR. THOMAS: Your Honor, just one quick issue. I
2 didn't want to draw attention to it with the jury in the
3 room, but when the government displayed my client's bank
4 records, they had his address and his account number all over
5 the screen.

6 THE COURT: You really need to be more careful
7 about it.

8 MR. CHIU: Your Honor, I will do that. I
9 apologize.

10 MR. THOMAS: They were so small I don't think
11 anyone could read it, but it was there.

12 THE COURT: I certainly couldn't read it, but
13 that's certainly not the standard by the end of the week.

14 All right. Thank you.

15 MR. CHIU: Thank you, Your Honor.

16 MR. AARON: Thank you, Your Honor.

17 MR. THOMAS: Thank you, Your Honor.

18 (Proceedings were concluded at 5:00 p.m.)
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